

**CONFIDENTIAL**

**INVESTIGATION REPORT**

**Legislative Assembly of the Northwest Territories  
Yellowknife, Northwest Territories**

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current MLA



# CONFIDENTIAL

## INVESTIGATION REPORT

### Legislative Assembly of the Northwest Territories Yellowknife, Northwest Territories

#### I. INTRODUCTION

In winter 2021, both general and specific concerns were raised about the work environment in the Office of the Clerk (OC) of the Legislative Assembly of the Northwest Territories (NTLA, Legislative Assembly or House), including that the work environment was and has been toxic or poisoned for the duration of the 19<sup>th</sup> Legislative Assembly (from October 2019 to present). Relatedly, Ms. Nicole Latour, Chief Electoral Officer (CEO), Mr. Steve Norn, Member of the Legislative Assembly (MLA or Member) for the Tu Nedhé-Wiilideh electoral district, Ms. April Taylor, Research Advisor, and **fourth complainant** **fourth complainant** (referred to collectively as “the Complainants”), all raised specific allegations relating to the conduct of the Clerk, Mr. Tim Mercer (“the Respondent”).

As a result of the situation, which came to a fore with a press conference by Mr. Norn on 15 February 2021, during which he called on Mr. Mercer to resign, the Board of Management (BOM or Board) decided to launch a Workplace Review<sup>1</sup>, which consisted of this Investigation relating to the specific allegations of harassment and/or inappropriate conduct made against the Clerk by the Complainants, addressed in this Investigation Report; and a Review of the concerns that were raised within the OC, as addressed in a separate, confidential Review Report. In order to ensure that the Workplace Review was conducted in an independent and fair manner, the BOM engaged an independent third party, Quintet Consulting Corporation (Quintet).

Quintet approached the task of carrying out the role assigned to it in the Terms of Reference (TOR) (Appendix A)<sup>2</sup> in a deliberate fashion, ensuring that the process was fair for all those who participated. As explained below, throughout the process, Quintet remained mindful of the importance of the matter to the persons involved, the institution and the community, while also ensuring that the process was thorough and fair.

This Report is organized into the following Parts:

- I. Introduction
- II. Mandate
- III. Background
- IV. Initiation and Conduct of Investigation

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<sup>1</sup> When the term “Workplace Review” is used, it refers to the combination of the Investigation and Review of concerns.

<sup>2</sup> The TOR for the Workplace Review, including this Investigation, were released publicly by the BOM on 2 March 2021. As described later in this Report, the TOR were updated on 30 April 2021. Both the 2 March 2021 and 30 April 2021 TOR have been appended to this Report.



- V. Relevant Policies and Codes
- VI. Method of Analysis
- VII. Allegations, Evidence and Findings
- VIII. Conclusion and Closing Comments

## II. MANDATE

The TOR formed the basis of Quintet's mandate and were applied throughout the Investigation. As stated in the TOR, "The goal of the Investigation is to determine if the specific allegations are founded".

Consistent with the TOR, in summary, Quintet was mandated to:

- Conduct a thorough review of all existing documentation relating to the matter.
- Develop a detailed plan for the Investigation, as well as all of the required communication materials and information documents to be used throughout the Investigation.
- Contact participants in the Investigation and provide them with information and documentation, including an explanation of the process and an Information Document.
- Conduct interviews with relevant parties and witnesses.
- Remind the participants of the confidentiality of the process.
- If necessary, produce disclosure of evidence documents to ensure the parties have an opportunity to review and rebut evidence that may be adverse to their interests.
- Produce an investigation report that:
  - Summarizes the evidence gathered; and
  - Contains analysis, findings and conclusions relating to the allegations raised in the written complaints.
- Provide updates weekly or as needed to the client representative relating to the progress of the Workplace Review.
- Conduct its assignment with the utmost discretion, in a manner consistent with the applicable legislation, policies and codes, and with the principles of procedural fairness.

## III. BACKGROUND

### A. General

Yellowknife is a small city, with a population of approximately 20,000. In conducting interviews in the context of this process, our Investigation Team frequently heard that relationships, friendships and family connections exist. The community is somewhat isolated and there seems to exist a level of familiarity between individuals that is not usually seen in larger cities in the South.

The NTLA, which is located in Yellowknife, is the seat of elected government in the Northwest Territories. Members are elected every four years from each of 19 ridings to serve in a unique consensus government. Unlike a legislative system that is based on party politics, the consensus government system privileges constant communication between regular MLAs and Members of Cabinet. It is essentially a parliament led by a permanent minority; members elect seven Cabinet ministers and a Speaker from their own ranks. One of the main aims of the consensus system is to ensure that the unique sociohistorical and cultural conditions of the Northwest Territories are accurately represented throughout the legislative process.

The NTLA has a number of Statutory Officers (also referred to as independent officers) who deal with various aspects of the business affecting the House and the Members. The CEO, who is one such Statutory Officer, is appointed by the Commissioner of the Northwest Territories for a four-year term, following a recommendation to appoint by the Legislative Assembly. The CEO reports to the Legislative Assembly through the Speaker. The CEO is responsible for administering territorial elections, by-elections, and plebiscites, in accordance with the *Elections and Plebiscites Act*.

The NTLA OC's mandate includes advising decision makers, and the Clerk serves as the Secretary of the BOM. The Clerk, who is the highest-ranking official in the OC, is appointed by the Commissioner of the Northwest Territories on the recommendation of the Legislative Assembly. The Clerk has the power, duties and functions of a Deputy Minister managing and administering the Legislative Assembly as described in the *Public Service Act* and the *Financial Administration Act*.

It is relevant to this Investigation that in April 2018, **fourth complainant** filed a complaint of harassment against Mr. Mercer; it was investigated and the related report was submitted in September 2018. Subsequently, in 2019, there was an investigation into allegations raised by **fourth** that Mr. Mercer had retaliated against **fourth** and others subsequent to **fourth complainant** 2018 complaint and the related investigation. These previous investigations will be referred to as "the 2018 and 2019 investigations" within this Report.

## **B. The Parties**

As indicated above, there were four Complainants and one Respondent in this Investigation. They are briefly introduced below.

### The Complainants

**Ms. Nicole Latour** is the CEO of the NTLA. The CEO is a Statutory Officer. She was appointed as the CEO in November 2014. She was Deputy Chief Electoral Officer (DCEO) from 2011 until her appointment as CEO in November 2014. She also worked as the Sergeant-at-Arms of the Legislative Assembly in the late 1990s. Ms. Latour reports to the Legislative Assembly through the Speaker.

*Mr. Steve Norn* is the MLA for Tu Nedhé-Wiilideh. He was elected in October 2019. Prior to being elected as a Member of the Legislative Assembly, he worked for the Public Prosecution Service of Canada as a Crown Witness Coordinator. Previous to that, he worked in a number of various fields including as insurance broker, RCMP constable, and constituency assistant.

*Ms. April Taylor* has been employed with the OC since 2013 as a Legislative Assembly Advisor (also referred to as Research Advisor). **fourth complainant**

**fourth complainant**

**personal information**

**personal information**

**fourth complainant**

### The Respondent

*Mr. Tim Mercer* was appointed Clerk of the Legislative Assembly in October of 2003 and has held this position continuously since then. The Clerk supervises a staff of approximately 35 employees who provide a broad range of support services to the Members of the Legislative Assembly and its standing committees. The Clerk position reports to the Speaker. Mr. Mercer has been on administrative leave since this Investigation began.

## IV. INITIATION AND CONDUCT OF INVESTIGATION

### A. The Complaints

The events preceding the initiation of the Investigation were as follows:

On 11 December 2020, Mr. Norn first raised concerns with the BOM relating to Mr. Mercer's conduct.

On 22 January 2021, Ms. Latour submitted a letter to the Premier (Appendix B).

On 11 February 2021, Ms. Taylor submitted a letter to the Board and media (Appendix C), in which she alleged that Mr. Mercer had harassed her.

On 12 February 2021, Ms. Latour made a complaint to all 19 MLAs (Appendix D), in which she alleged that Mr. Mercer had abused his authority and harassed her.

On 12 February 2021, Mr. Mercer released a statement to the CBC (Appendix E), addressed to a reporter, Mr. Gleeson. In it, he commented on certain aspects of Ms. Taylor's 11 February 2021 Complaint which he said had been the subject of two previous investigations.

On 15 February 2021, the CBC published a news report regarding Ms. Taylor's 11 February 2021 letter (her Complaint) and related matters (Appendix F).

On 15 February 2021, Mr. Norn held a press conference in which he raised allegations relating to Mr. Mercer's conduct and provided the Law Clerk with his statement (Appendix G).

On 18 February 2021 and 2 March 2021, the BOM received correspondence **fourth complainant** **fourth complainant** alleging that Mr. Mercer had violated **fourth complainant** rights to confidentiality and privacy by making public comments about previous harassment investigations (Appendix H).

## B. Launch of the Investigation

On 2 March 2021, Quintet was engaged by the BOM to conduct the present Investigation. Quintet began work on the Investigation on 10 March 2021. The Investigation Team consisted of experienced consultants in the area of the prevention and management of conflict in the workplace. It is specifically noted that one of the members of the investigation team was the former Chief Human Resources Officer (CHRO) of the House of Commons in Ottawa.

Quintet began by considering the available background relating to the allegations and reviewing the relevant documents.

Quintet then developed a detailed plan for the Investigation, all of the required communication materials, including the *Information for Parties and Witnesses* document (Appendix I), as well as communication and interview protocols. These materials were prepared by the Investigation Team, for the Investigation and were followed scrupulously by the Team in communicating with and interviewing parties and witnesses.

On 16 March 2021, the Investigation Team sent individual introductory emails to the first three Complainants and the Respondent, to introduce Quintet, to provide them with information regarding the Investigation process, and, in the case of the three Complainants, to invite them to individual interviews. **fourth complainant** whose Complaint was submitted later, was contacted on 21 May 2021.

## C. Procedural Matters

Prior to the start of interviews, Quintet received correspondence from counsel for Mr. Norn and Ms. Latour who, it is noted, were represented by the same counsel.

These included:

- On 22 March, 6 April and 16 April 2021 from counsel for Ms. Latour. These letters, followed by Quintet's response, if applicable, can be found at Appendix J.
- On 22 March, 8 April and 15 April 2021 from counsel for Mr. Norn. These letters, followed by Quintet's response, if applicable, can be found at Appendix K.

In sum, the letters, which were structured in a similar manner, asked questions about the investigation process and procedure, raised concerns about a perceived limited scope of the Investigation, and raised concerns related to the perceived lack of impartiality of the BOM. Letters from Mr. Norn's counsel further raised allegations on behalf of others. The letters also requested that they be allowed to make written submissions prior to being interviewed: Mr. Norn's 15 April 2021 letter and Ms. Latour's 16 April 2021 also represented written statements in support of their allegations.

Quintet carefully reviewed and then responded to all of these letters, and raised some of the Complainants' concerns with the BOM for its consideration.

Ultimately, this correspondence led to the TOR for the Workplace Review being modified. However, the TOR for the Investigation did not change. This notwithstanding, Quintet interpreted the TOR as providing it with the ability to invite those identified by Mr. Norn as having allegations to participate in the Investigation. This interpretation flowed from the BOM's general instruction to ensure that this matter was thoroughly and fairly resolved for all those involved.

It is noted that, at all times, the BOM allowed Quintet to conduct this Investigation in an independent manner; at no time did the BOM attempt, directly or indirectly, to influence the outcome of this Investigation. The views and findings expressed in this Report are Quintet's.

#### **D. Investigation Process**

##### General

We begin by noting that this was a very complex situation, which resulted in what was, in many ways, an unprecedented Investigation. The Complaints were not submitted in a traditional manner, the matter became highly public, and involved a variety of different actors, including statutory officials, elected Members, high-ranking public servants and staff. At all times, when developing and applying the methodology for this Investigation, these factors were taken into consideration.

The Investigation contemplated by the TOR is administrative in nature. The Investigation methodology was designed to be consistent with the general principles applicable to administrative investigations, including the principles of procedural fairness. Administrative investigations involve a systematic process of gathering evidence to help an investigator determine if an allegation is founded or not. To do this, the investigator is required to obtain and evaluate information regarding the circumstances and facts surrounding an allegation or set of allegations in a fair and impartial manner. The Investigation is conducted in a manner that allows parties to present their position fully and to have it considered by someone who is impartial.



The Complainants, Ms. Taylor, Ms. Latour, Mr. Norn, fourth were interviewed first, to obtain clarification on the allegations contained in their Complaints, as well as relevant contextual evidence. The individuals identified by Mr. Norn as having allegations against Mr. Mercer were then contacted. Following this, all the written documents submitted by the Respondent were reviewed, he was sent a Disclosure of Allegations, and then interviewed. Finally, attempts were made to interview the witnesses identified by the parties either through teleconference or in writing.

During initial correspondence, interviewees were provided the *Information for Parties and Witnesses* document (Appendix I). Interviewees were given the opportunity to send their written questions to a dedicated and confidential email address before their interview. The principal parties were also provided the opportunity to be accompanied by a support person and all interviewees were invited to receive the documentation in any other Official Language of the Northwest Territories. Interviewees were informed that the investigation process and the matters covered in the interview were confidential and were not to be discussed with others. They were further informed that, to respect procedural fairness rights of the parties, and to ensure a thorough investigation, the information they provided was not anonymous and could be included, in whole or in part, in the Investigation Report, which would be delivered to the BOM.

After an individual had confirmed their participation in the Investigation, a member of the Investigation Team sent the participant an MS Outlook invitation for their interview. The Outlook invitation thanked them for confirming their availability for an interview with the Investigation Team. The invitation also informed them that, by participating in the interview, they were acknowledging that they had received, reviewed and understood the contents of the *Information for Parties and Witnesses* document and had been provided an opportunity to ask questions concerning their participation in this matter.

Prior to their interview, interviewees were asked to sign an *Informed Consent* (Appendix I), which stated they:

- Understood that any required disclosure of the information they provided would be done in a manner consistent with the principles of procedural fairness, and privacy legislation.
- Understood that, by participating in the Investigation, their name and identifying information could be included in the Investigation Report, which would be delivered to the BOM.
- Understood that this matter is confidential and that they should not discuss it with anyone not authorized as having a need to know.
- Acknowledged that they had been provided an opportunity to review the *Information for Parties and Witnesses* document, understood its contents, and were provided an opportunity to ask questions concerning their participation in this matter.

The same interview format was followed with every interviewee:

- The member or members of the Investigation Team briefly introduced Quintet and gave an overview of the Investigation process.

- Participants were asked to confirm that they understood the process, as described in the *Information for Parties and Witnesses* document they were sent prior to the interview.
- The member or members of the Investigation team informed the participant that an interview summary would be prepared after the interview and that they would have the opportunity to review the interview summary for accuracy, and to suggest changes if they were warranted to ensure that the information was correct and complete. Interviewees were told that their validated interview summary would represent their signed statement.

After each interview, an interview summary was prepared, for the review and validation by the party or witness. This process ensured that the interview summaries were accurate and complete, and allowed parties and witnesses the opportunity to correct inaccuracies or clarify and explain the information they gave in their interview.

Due to the COVID-19 pandemic, interviews were conducted virtually, primarily using Microsoft Teams.

Further, five witnesses were invited to participate in writing due to the nature of incidents they allegedly witnessed. In those instances, after agreeing to participate and signing the *Informed Consent* form, a list of questions was provided to them by email, in a password-protected document, and they were asked to return the document with their answers to the questions added. Three witnesses agreed to participate in this manner, one later requested to be interviewed by telephone instead. Another stated that he had no responses after reviewing the questions. Only one submitted his response in writing.

#### The Complainants

personal information



Mr. Norn was interviewed on 14 May 2021. He was sent his draft interview summary on 21 June 2021. Mr. Norn did not respond to any further correspondence from the Investigation Team. As such, as communicated to Mr. Norn on 11 August 2021, the version of his interview summary sent to him on 21 June 2021, was considered his final, signed statement. The related interview summary is found at Appendix M.

Ms. Latour was interviewed on 12 May and 16 June 2021. She was sent her draft interview summary on 24 June 2021. On 9 July 2021, Ms. Latour returned her comments on her interview summary, also indicating, "...this will be my final communication and involvement with the investigation. I consider that matter closed for me...". Ms. Latour was sent a final version of her interview summary on 12 August 2021. The related interview summary is found at Appendix N.

fourth complainant

### Allegations Made on Behalf of Others

Based on the information contained in Mr. Norn's 15 April 2021 statement and Ms. Latour's 16 April 2021 statement, from 26 May to 4 June 2021, Quintet attempted to contact<sup>3</sup> the following individuals:

- third parties
- 
- 
- 
- 
- 
- 

Subject to minor modification, when appropriate, individuals for whom Quintet was able to reach via email were sent the following correspondence:

As you may know, the Board of Management of the Northwest Territories Legislative Assembly has engaged Quintet Consulting Corporation to conduct an Investigation into allegations of harassment and/or misconduct.

Your name has been brought to our attention in the context of the matters we have been mandated to investigate. We are contacting you because the information we have received to date indicates that you may have an allegation of harassment and/or inappropriate conduct that you wish to make on the record relating to the conduct of the Clerk. Making an allegation on the record would mean that you consent to have your identity and the information you provide revealed to the named respondent.

If you do intend to make such an allegation, could you please respond to this email and provide your allegation in written form. It will then be assessed based on the following criteria:

- the individual reportedly impacted by the incident or conduct would need to agree for their identity to be revealed to the respondent;
- there needs to be a direct connection between the alleged incident and the current workplace or workplaces;
- there needs to be a sufficient level of recency (normally this means that the most recent alleged event occurred within the last 1-2 years, barring extenuating circumstances); and
- the matter would need to be unresolved.

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<sup>3</sup> In some cases, Quintet was provided with a telephone number only and one individual did not return our calls.



If your allegation is deemed to fall within the scope of the investigation, you will be invited to attend an Investigation interview, where you will be asked a series of background questions, to give you the opportunity to provide relevant context. You will also be asked specific questions about the allegations you wish to bring forward.

We have attached a document to this email with information about the Investigation [the *Information for Parties and Witnesses*]. If, after reviewing this information, you have any questions, please send them to us in writing.

We also wish to take this opportunity to remind you that this is a confidential process.

Please do not hesitate to indicate if you would like to receive this communication in any other Official Language of the NWT.

Best regards,

Of the six individuals contacted, three responded to Quintet; however, none of these individuals chose to submit allegations against Mr. Mercer.

#### Disclosure to Respondent

After all of the Complainants had been interviewed, on 18 June 2021, Mr. Mercer was sent a document entitled, "Disclosure of Allegations to Mr. Mercer" (Disclosure, Appendix P), as well as the relevant Complaint documents, and, where relevant, additional written submissions from Ms. Latour, Mr. Norn, Ms. Taylor, and **fourth** [REDACTED]. The Disclosure was provided to Mr. Mercer in order to ensure he had a clear understanding of the matters which could potentially fall within the scope of this Investigation, and to summarize those allegations about which it was anticipated that findings could be made in this Investigation Report. Out of fairness and transparency, the list of allegations was inclusive, and allowed for some consideration of contextual matters. Subsequent to the list of allegations being disclosed to Mr. Mercer, and his Response [described further below], a determination was made with respect to each of those allegations as to whether they would be considered further within this Investigation Report. This will be addressed where applicable to each of the individual Complaints.

#### The Respondent

On 5 May 2021, Mr. Mercer submitted a document entitled "Written Statement of Tim Mercer" (Appendix Q), which is considered his initial Response to the four Complaints against him.

After receiving the Disclosure, Mr. Mercer was invited to add to his initial Response, if he wished to do so, prior to participating in an Investigation interview. On 23 June 2021, Mr. Mercer responded in writing to the allegations that had been disclosed to him, which is considered to be his additional Response (Appendix R).

Mr. Mercer also participated in an Investigation interview on 25 June 2021, at which time he provided additional information about the matters under investigation. The related interview summary is found at Appendix S.

### Witnesses

Efforts were made to interview the witnesses proposed by the Complainants and Respondent, especially where the evidence indicated that they might have relevant, first-hand information or documents about the allegations under review. If facts were already agreed or where a potential witness could not reasonably have been expected to provide evidence that was directly relevant to the allegations under investigation, proposed witnesses were not interviewed. Consideration was also given to the confidential nature of the investigation when deciding who to interview.

In total, after thoroughly reviewing the evidence, from 29 June to 2 August 2021, 14 individuals were invited to participate in the Investigation as witnesses, either through interviews or in writing, as explained above.

The following individuals participated in the Investigation as witnesses:

**Mr. Michael Ball** has worked at the Legislative Assembly since December 2013 and has held a variety of positions since that time **personal information**

**personal information**

**Ms. Danielle Mager** has worked at the Legislative Assembly since 2007 in various capacities

**personal information**

**Former MLA**

**Mr. Darrin Ouellette** began working at the Legislative Assembly in 2011 as the Director of Corporate Services. **personal information**

**Mr. Glen Rutland** began working at the Legislative Assembly as a Deputy Law Clerk in 2013, becoming the Law Clerk in 2018. He applied for the position of Deputy Clerk, House Procedures and Committees position and was appointed to this position in May 2019, becoming a full-time employee of the Legislative Assembly at that time. In February 2021, he became Acting Clerk in Mr. Mercer's absence.

**Current MLA**

third party

*Ms. Kim Wickens* began working at the Legislative Assembly in October 2019 as the Deputy Clerk, Members' and Precinct Services. **personal information**

**personal information**

The following individuals were contacted and either declined to participate, declined to respond to questions that they were provided, or did not respond to attempts to contact them:

third party

It is specifically noted that there was a lack of witness participation, particularly from MLAs, despite efforts and reminders.

#### **E. Additional Disclosure**

After all the evidence was gathered, it was carefully reviewed and considered. It was determined that no additional disclosure of evidence to the principal parties was required prior to completing this Investigation Report. In reaching this conclusion, consideration was given to the overall intent of the process and the critical need to complete the process expeditiously, the fact that many of the key facts were agreed or largely undisputed, the fact that two of the four Complainants stopped communicating with the Investigation Team after participating in their interview and a third indicated, after validating her interview summary, that it would be her final involvement in the process, the nature of the evidence gathered, and the importance of the confidentiality of the process. Lastly, it was determined that the parties had been provided a full and fair opportunity to express themselves on the key matters in dispute and that a sufficient body of high-quality evidence had been received and reviewed to reach appropriate conclusions on the key matters under investigation.

#### **V. RELEVANT POLICIES AND CODES**

It is noted that, in many ways, the positions of the principal parties in this process made the situation unique, given that the parties included an MLA, a Statutory Officer, two employees of the OC and a former employee. This notwithstanding, the following policies and codes were

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<sup>4</sup> Based on Mr. Norm's 15 April 2021 statement, **third party** was invited to submit an allegation. He chose not to, but did submit a statement, which was considered broadly as witness evidence.

considered to represent a useful framework for the Investigation even if they do not all apply to all of the parties.

#### **A. Code of Conduct Respecting Conflict of Interest and Oath of Office and Secrecy for the Employees of the Government of the Northwest Territories**

*The Code of Conduct Respecting Conflict of Interest and Oath of Office and Secrecy for the Employees of the Government of the Northwest Territories (Code of Conduct)* states the guidelines with regards to conflicts of interests within the NTLA.

##### **Introduction**

1. The Government of the Northwest Territories (GNWT) is entrusted with the protection of the public interest. In view of the importance of this trust, it is essential that GNWT employees adhere to high ethical standards that maintain and foster public confidence.

[...]

##### **Guidelines**

6. Employees must perform official duties and arrange private affairs so public trust in the integrity and objectivity of the Government is conserved and strengthened.
7. Employees must arrange their personal affairs so there is no contravention of the Code. [...] Employees are responsible for making sure there are no conflicts of interest.
8. An employee who contravenes any section of the Code may be subject to disciplinary action up to and including dismissal.
9. Employees shall disclose and discuss with their Deputy Head, any situation, which may be a conflict of interest.

#### **B. Harassment Free and Respectful Workplace Policy**

The *Harassment Free and Respectful Workplace Policy* (Policy) states that “[t]he GNWT is committed to providing a work environment where there is respect amongst employees and to facilitating the resolution of workplace harassment complaints” and that “[h]arassment in any form is unacceptable behaviour and will not be tolerated”. This policy defines “Workplace Harassment” as one of the following behaviours:

**Abuse of Authority** – occurs when an employee improperly uses the power and authority inherent in their manager position to endanger an employee’s job, undermine the performance of that job, threaten the economic livelihood of the employee, or in any way interferes with or influences the career of the employee. It does not include the legitimate and proper exercise of a manager’s responsibilities including disciplinary measures, distribution of work assignments, training, staffing decisions or performance evaluations.

**Harassment** – unwanted conduct that can be reasonably considered to have the purpose or effect of violating an individual’s dignity and can reasonably be considered to result in creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual based on one or more prohibited grounds of discrimination listed in the *Human Rights Act*.

Prohibited grounds of discrimination listed in the *Human Rights Act* include race, colour, ancestry, nationality, ethnic origin, place of origin, creed, religion, age, disability, sex, sexual orientation, gender identity, marital status, family status, family affiliation, political belief, political association, social condition or pardoned criminal conviction.

**Personal Harassment** – unwanted conduct that can be reasonably considered to have the purpose or effect of violating an individual’s dignity and can reasonably be considered to result in creating an intimidating, hostile, degrading, humiliating or offensive environment. Personal harassment does not have to be based on a prohibited ground of discrimination listed in the *Human Rights Act*.

**Sexual Harassment** – unwanted sexual conduct that can be reasonably considered to have the purpose or effect of violating an individual’s dignity and can reasonably be considered to result in creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual, whether on a one-time basis or in a series of incidents; or that an individual might reasonably perceive as placing a condition of a sexual nature on their employment or on an opportunity for training or promotion

This policy details the complaint resolution informal and formal processes and states that “[a]ll persons share in the responsibility to maintain confidentiality necessary to the process” and that “[a]ll matters and materials relating to a workplace harassment complaint are to be treated with the utmost confidentiality by all participants involved and are subject to a strict need-to-know basis. Any employee who fails to comply may be subject to disciplinary measures”.

### **C. Code of Conduct for Members of the Northwest Territories Legislative Assembly**

*The Guide To The Rules Relating to the Conduct of Members* states that:

3. Members must treat members of the public, one another and staff appropriately and without harassment. All Members must take all reasonable steps [to] ensure their work environment is free from harassment.
4. Members must carry out their official duties objectively and without consideration of personal or financial interests, and must arrange their personal affairs so as to maintain the trust and confidence of the public.
7. Members must take appropriate steps to protect the confidentiality of any personal information, personal health information, or other confidential information that comes into their possession.

## D. Procedural Fairness

This Investigation operates within a framework of administrative law that includes a duty of procedural fairness. In *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 (*Baker*), the Supreme Court specifies that an administrative decision which “affects the rights, privileges or interests of an individual” triggers the application of the duty of fairness. Procedural fairness includes the principle that whenever an administrative decision may have an adverse effect on or serious consequences for an individual, the decision-maker must hear that individual’s side of the story before making a decision.

Depending on the context, procedural fairness can require, *inter alia*, the right to notice, disclosure of the allegation and the opportunity to respond.

In *Baker*, the Supreme Court also stated that procedural fairness is flexible, its content depending on the context of the situation and that the degree of procedural fairness in a case depends on an analysis of the following factors:

- The nature of the decision;
- The nature of the Statutory scheme;
- The importance of the decision to the affected person;
- The presence of any legitimate expectations; and
- The choice of procedure made by the decision-maker.

## VI. METHOD OF ANALYSIS

### A. Admissibility of Allegations

In determining the allegations that could potentially fall within the mandate of this Investigation, the Complainants’ allegations were carefully reviewed and considered, along with clarifying information provided by the Complainants during their Investigation interviews. In doing so, the following criteria were applied in determining which allegations to retain for further consideration in this Investigation:

- i) the individual reportedly impacted by the incident or conduct would need to agree for their identity to be revealed to the respondent (otherwise they could share their observations or concerns confidentially in the context of the Review);
- ii) there would need to be a direct connection between the alleged incident and the current workplace or workplaces;
- iii) there would need to be a sufficient level of recency (normally this means that the most recent alleged event occurred within the last 1-2 years, barring extenuating circumstances); and
- iv) the matter would need to be unresolved.



## B. Burden and Standard of Proof

The standard of proof throughout the Investigation was, *on a balance of probabilities*. In making findings on a balance of probabilities, the weight of the totality of evidence provided as well as the overall plausibility of the versions of events presented by the parties was considered, with weight given to matters which were undisputed in the evidence, agreed to by the parties, or which could be established based on high quality corroborative witness or documentary evidence.

The allegations were assessed on the basis of relevant evidence as described in and appended to this Report, and in light of relevant policies and principles.

The Complainant has the burden of proving the factual and substantive basis of their allegations.

That burden is met if the evidence shows that:

- The Respondent acted as alleged on a balance of probabilities; and
- The actions meet the criteria to represent a breach of the norm or standard described in the applicable code or policy.

## C. Quality of Evidence

Some comments are warranted about the quality of evidence gathered during this Investigation. In general, there is a distinction between a witness's credibility and the reliability of their evidence. A credible witness is someone who has provided what amounts to sincere evidence, speaking the "truth" as they believe it to be. The reliability of evidence relates to the objective accuracy of the evidence. For a variety of reasons, an otherwise credible party or witness may not be able to accurately observe, recall or describe the events or incidents that were alleged to have occurred. A credible party or witness may, therefore, give evidence that is unreliable. Further, it has long been established that a party or witness may be credible or reliable with respect to some aspects of their evidence, and less credible or reliable with respect to other aspects of their evidence.

When assessing the quality of evidence, interviewees were not expected to have a perfect recollection of the events under investigation. Such an expectation would be unrealistic in the circumstances, given factors including the passage of time. Minor inconsistencies were therefore to be expected and did not necessarily discredit an interviewee's evidence.

In the context of an administrative investigation, it is Quintet's general practice to focus on the quality and reliability of parties' evidence, rather than on a person's overall demeanour and their "credibility". This is the case because in most instances parties participate in good faith, have steadfast beliefs and do not knowingly make untrue statements. Of course, there are exceptions to this practice.

Overall, Quintet did not have concerns with respect to the overall credibility of Ms. Taylor, Ms. Latour and **fourth complainant** as interviewees. In our view, they provided what they believed to be truthful evidence to this Investigation. As described and explained in greater detail below, there

were concerns with the evidence Mr. Norn provided as well as the tenor and manner in which he participated in the Investigation. For his part, Mr. Mercer participated actively in the Investigation. His evidence was considered forthright, detailed, nuanced and overall of a high-quality. There were no concerns with respect to the credibility of any of the witnesses who participated in this Investigation.

As part of his evidence to this Investigation, Mr. Mercer quoted from several emails. Mr. Mercer volunteered to submit these emails, but a miscommunication occurred between the Investigation Team and Mr. Mercer about this issue. Essentially, by the time Mr. Mercer understood that he had been invited to submit the original emails, Mr. Mercer no longer had ready access to them. Due to the nature of the quoted emails, their content, and the overall tenor of Mr. Mercer's participation in the process, Quintet did not have any reason to doubt the authenticity of the portions that Mr. Mercer said he had quoted verbatim as part of his evidence, particularly since their content was generally corroborated by other sources of information. As such, the Investigation relied on the quoted passages of the emails.

## VII. ALLEGATIONS, EVIDENCE AND FINDINGS

### A. Introduction

A large quantity of evidence of varying degrees of quality and relevance was presented by the principal parties and witnesses. While all evidence was carefully considered, this Part of the Report was prepared in summary form, and guided by the principles and purposes of the Investigation. As such, this Report will not conclude on all the matters, themes and arguments raised in the evidence. Instead, findings of fact will be limited to those directly relevant to determining whether or not the core admissible allegations are founded in whole or in part.

When evidence has been quoted directly, it has been done without editing, typographical and grammatical corrections, unless they were required for a proper understanding of the evidence.

This Part begins with a presentation of general evidence submitted by Mr. Mercer that is considered relevant to the Investigation as whole. The admissible allegations related to each Complainant and a summary of the associated evidence will be presented, immediately followed by an analysis of that evidence to come to findings of fact.

### B. General Evidence Submitted by Mr. Mercer

Mr. Mercer is the Respondent to four separate Complaints in this Investigation. While contextual information from the parties related to each of those Complaints is presented in the appropriate section that follows, an overview of Mr. Mercer's Response was deemed appropriate, both to ensure an understanding of the matters under investigation as well as in terms of fairness for Mr. Mercer, given the circumstances described above.



Mr. Mercer's 33-page initial Response to the four Complaints against him, dated 5 May 2021 (Appendix Q) and 17-page additional Response to the allegations that were disclosed to him on 18 June 2021, dated 23 June 2021 (Appendix R), have been carefully reviewed and considered.

Mr. Mercer also participated in an investigation interview on 24 June 2021, at which time he provided additional information about the matters under investigation. The related interview summary is found at Appendix S.

In his 5 May 2021 initial Response, Mr. Mercer provided background information as well as information specific to the allegations contained in each of the Complaints. His general evidence, as context to the matters under investigation, is summarized below.

Mr. Mercer's evidence is that he was appointed as Clerk of the Legislative Assembly in 2003, and has held that position since that time. He reports to the BOM, taking direction from them and from the Speaker; he acts as Secretary to the BOM, and plays a similar role for the Caucus. He described his role in providing advice to and implementing direction from the elected Members. He also described his role in supervising approximately 35 Legislative Assembly staff as they provide support to the MLAs and standing committees. Further, he indicated that he chairs the deliberations of the Legislative Assembly following elections and prior to the appointment of the Speaker and Cabinet.

Mr. Mercer also indicated that his staff provide administrative support to independent officers of the Legislative Assembly, including the CEO; he noted that these officers, while autonomous, are accountable in certain regards to the Legislative Assembly through the BOM and other standing committees, and that in cases of significant performance issues, he is called upon to provide advice to the BOM.

Mr. Mercer described his educational qualifications, noting his consistently excellent performance, and the support that former employees have offered in light of the current allegations.

Mr. Mercer also noted that:

None of this is to say that I have not made or implemented decisions that individuals have disagreed with or taken offense to. The nature of my position involves giving my best advice to decision makers, and making decisions within my own scope of authority, that often result in one or more parties being adversely affected. I am frequently called upon to deliver bad news to individuals resulting from decisions made by either the Assembly in formal session, the Caucus of all 19 Members or the Board of Management, regardless of whether said decisions were consistent with my best advice. My professional mantra, common to most senior public servants, is to give fearless and expert advice to decision makers in private, and loyally implement whatever direction I am provided once that advice is rendered. I have dedicated my many years of senior public service to giving the best, most thoughtful advice I have to offer and leaving the politics to those who are elected to govern. While this often puts me at the centre of political conflict, I

have done my very best to not get drawn into such conflicts or let my advice be tempered by political favouritism. It is not always an easy line to walk.

In addition to the above information, Mr. Mercer provided context about the events of February 2021, which led to this Investigation. The information that follows was deemed relevant to the investigation as a whole.

Mr. Mercer described that on 11 and 12 February 2021:

- **third party** advised him, through the Deputy Clerk, Mr. Rutland, that Mr. Norn had approached **third party** about an investigation he (Mr. Norn) was conducting about him (Mr. Mercer) and that Mr. Norn had spoken to four staff about a 2018 harassment investigation, seeking support to have him (Mr. Mercer) removed as Clerk.
- He was also informed that Ms. Latour was telling some Members he was working behind the scenes to prevent her reappointment, and she subsequently submitted a letter alleging “malfeasance” on his part; he then emailed Ms. Latour assuring her he was supportive of her reappointment and the proposed relocation of her office to Hay River.
- **third party** informed the Speaker he was going to bring forward a letter on the part of a current employee, alleging harassment and bullying by him (Mr. Mercer).
- **third party** told him that Mr. Norn “had a hate on” for him, that he “isn’t going to stop until he gets what he wants”, and that **third party** did not support Mr. Norn’s efforts.
- Subsequently, at the BOM meeting, **privileged**  
**privileged**  
**privileged**
- Feeling that there was a “coordinated effort” to reveal and reopen the 2018 harassment investigation to support Mr. Norn’s attempts to have him removed and gather supporting narratives from others, including Ms. Latour and Ms. Taylor, he decided to submit a formal harassment complaint against Mr. Norn, which he had previously drafted [Mr. Mercer did not indicate whether he submitted such a complaint].
- Mr. Norn, as Chair of the standing committee of non-cabinet members, **privileged**  
**privileged**
- **privileged**  
**privileged**
- CBC contacted him and indicated that they had Ms. Taylor and Ms. Latour’s letters and that they had interviewed two employees who were corroborating Ms. Taylor’s accusations.
- On or around 12 February 2021, he appeared before the BOM, **privileged**  
**privileged**

privileged

- On 12 February 2021, Mr. Mercer issued a statement to the media (Appendix E).

In his 5 May 2021 Response, Mr. Mercer wrote:

[...]

[M]y decision to make a statement to the media was made in response to an inquiry from a CBC reporter who was in possession of Ms. Taylor's letter and who had already spoken to other employees who purported to corroborate her allegations. The allegations made in her letter from that time frame were thoroughly investigated and either dismissed or discredited. Ms. Taylor, in her public letter, made specific reference to this investigation and a subsequent retaliation complaint that was also dismissed despite having been directed, like me, to treat them as confidential. She called the integrity of both these processes into question. In addition to the other confidential matters that had been previously divulged to the media, including my November 17, 2020 email to Mr. Norn and the fact of our upcoming mediation process [described under the evidence related to Mr. Norn's allegations], Ms. Latour's complaint letter had also been provided. I issued my statement in haste, feeling that I needed to act immediately to protect my reputation. While I now regret having done so, at the time I felt I was left with no alternative but to defend myself against an inaccurate and damaging portrait of events being fed to the media in real time.

Ms. Taylor's February 11, 2021 allegations are serious. The fact that she chose to make them public leads me to conclude that they were made with malicious intent. They are also, in my respectful opinion, groundless. While I am unaware of who shared Ms. Latour's letter with the media, I come to the same conclusion with respect to them. It is unfortunate that Ms. Taylor and others made the decision to air their grievances in the court of public opinion rather than through established and structured processes. Had they done so, I most certainly would have reserved my response to those forums. At the time I felt I had no choice but to defend myself and my reputation. The excerpts of the 2018 investigation report were, in my view, relevant and responsive to Ms. Taylor's public accusations. I made sure that no one other than herself could be identified in the excerpts I quoted.

Mr. Mercer explained further that he "felt compelled to defend myself, my career, my reputation and everything I stood for as a person, a public servant and a father," given his, and his family's, involvement in the community. He acknowledged that he issued the press release hastily, before having access to counsel, and in hindsight he regretted it, noting it would have been appropriate to remain quiet and allow due process, as he had done in the 2018 and 2019 investigations; however, he did so because of the one-sided presentation of complaints that had already been dismissed through the 2018 and 2019 investigations, which, he believed, Ms. Taylor had shared with the other employees who came forward the same day as she did.

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<sup>5</sup> The BOM's statement is available on the NTLA website.

Further, Mr. Mercer stated that on 15 February 2021, Mr. Norn convened a press conference where he accused him (Mr. Mercer) of terrorizing and abusing his staff, intimidating MLAs and creating a toxic legacy within the institution to which he has dedicated his career for nearly 18 years.

Mr. Mercer also referred to a Facebook post from **third party** in which **thir** indicates **third** has “spoken to Steve Norn’s lawyer”, that they are “compiling stories” about him and “the more people who come forward the stronger the case they will have against Tim”, even if they only heard about (and did not witness) an event.

Mr. Mercer noted that [in their Complaints] both Mr. Norn and Ms. Taylor portrayed an incident that occurred between him (Mr. Mercer) and **third party** in a manner that was “inconsistent with what actually took place” [described further elsewhere in this Report].

Mr. Mercer concluded his 5 May 2021 initial Response as follows:

I took important lessons from the 2018 harassment complaint, investigation and report, **personal information**

**personal information**

**personal information** I take pride in my many years of service to the Legislative Assembly of the Northwest Territories and the employees I lead. It is my honest assessment that the workplace I lead is not toxic, corrupt or unethical. With the exception of Ms. Taylor, I enjoy close and professional working relationships with all my staff and colleagues. I regret that Mr. Norn, Ms. Taylor and Ms. Latour felt the need to make the allegations they made and in the manner they did so. While I accept that they believe what they have written, it is my respectful submission that these allegations are untrue and without merit.

### **C. Allegations, Evidence and Findings**

#### **i) Ms. Latour’s Allegations Against Mr. Mercer**

The allegations summarized below are based on Ms. Latour’s 22 January 2021 Complaint, the 16 April 2021 letter submitted to Quintet on Ms. Latour’s behalf, as well as on clarifying information gathered during Ms. Latour’s Investigation interview. The allegations as presented below represent a high-level summary of Ms. Latour’s case, based on the evidence gathered.

## Allegation

### *General Allegation*

Ms. Latour alleges that Mr. Mercer abuses the power of his position to control and influence the BOM and ultimately the Legislative Assembly.

Ms. Latour wrote:

It became apparent to me through the years that the Clerk has been undermining the independence of the OCEO by manipulation and personally influencing the Board of Management (BOM). The Clerk has been able to accomplish this by strategically filtering information provided to the BOM concerning the OCEO or prevent any opportunity for the OCEO and BOM to form a relationship or effective means of communicating in order to share knowledge that would be used when rendering a decision which affect the OCEO.

She also wrote:

In fairness, I must say that I did have minority support of some BOM members for each of the Assemblies and although they argued for me and the best interests of my office they were over powered. I have never been allowed to foster mutual-respect relationships with BOM members. They are totally reliant of the influence of the Clerk's office to make decisions and I have been told by many around the Clerk's office of the agenda to have me removed. I feel the concern I bring to your attention today is yet another attempt to ensure I do not continue to serve as Chief Electoral Officer.

At her investigation interview, Ms. Latour clarified that she believed this to be the case in part based on examples [described below] of Mr. Mercer wanting to remove her from her position. She added that Mr. Mercer was working actively to do so; she described that he was controlling rather than managing and doing so in subtle ways. She stated that she also believes this is happening because she is Indigenous. In this regard, Ms. Latour provided evidence that in 2014 or 2015, a former employee recounted a staff meeting where they felt discussions amongst Mr. Mercer and his staff about another Statutory Officer had racial undertones.

### *Specific Allegations of Fact*

1. Ms. Latour alleges that Mr. Mercer encouraged a complaint against her, leading to a 2017 investigation, for "nefarious purposes"; she stated that **third party** **third party** told her that Mr. Mercer believed this complaint to be the "crack in her armour".
2. Ms. Latour alleges that Mr. Mercer has intentionally isolated her and her Office from the BOM, thus jeopardizing their [the OCEO's] ability to be election-ready, specifically by:



- a. Preventing her from presenting on CEO operations to the BOM, thus affecting her budget and her ability to staff;
  - b. Limiting her time in front of the BOM;
  - c. Directing the BOM's questions to her (through the Deputy Clerk) to inappropriately control the flow of information; and
  - d. Relatedly, Ms. Latour alleges that on 4 December 2020, when she was in front of the BOM, **privileged & third party**  
**privileged & third party**
3. Ms. Latour alleges that she has been informed on two occasions that the Clerk was actively working to remove her from her role in order to fill the position with someone who could better facilitate his influence over the Legislative Assembly; and that **third party**  
**third party**  
**third party** told her multiple times that Mr. Mercer "wanted her gone".
- a. In 2018, she had to compete for her position against a known friend of the Clerk's Office, **third party** using a recruitment process that was not consistent with the process followed in 2014; and
  - b. In 2020, she had to compete for her position despite her expressed interest to the BOM to continue in the position after serving 6.5 years and her exemplary record.
4. Ms. Latour alleges that Mr. Mercer has intentionally ignored and underserved her from the onset of her tenure, negatively affecting the operational stability and flow of information to and from the OCEO; specifically:
- a. Mr. Mercer did not take timely decisions related to job descriptions she sent to the Clerk's office in December 2020, affecting her ability to staff positions and the OCEO's work plan.
    - i. When she asked him about the job descriptions she had submitted, he replied that "your staff is my staff", contrary to the *Elections and Plebiscites Act* and overstepping his authority with respect to decisions for the OCEO related to job evaluation and staffing.
  - b. Mr. Mercer subjected her office to budget cuts for benefits and compensation, preventing her from filling the essential DCEO position and leading to high staff turnover, then required her to account for this high turnover;
  - c. In 2021, Mr. Mercer controlled the support she receives for administrative and financial services, such as submitting invoices for reimbursement, by having her invoices vetted by the Deputy Clerk, Ms. Wickens, despite Ms. Latour having a verbal informal agreement with **third party** on these matters;
  - d. Mr. Mercer removed duties of a shared position within the OCEO without providing notice or asking for her input; and
  - e. Mr. Mercer showed a lack of courtesy by failing to communicate necessary information, such as:
    - i. Failing to share information about matters being discussed within the Legislative Assembly that affect the OCEO;

- ii. Failing to consult with or inform her when the *Elections and Plebiscites Act* was being amended by another Bill; and
- iii. Not providing her notice when the CEO Report on the 2019 election was read into the House and considered by the Committee of the Whole.

### Summary of Evidence Related to Ms. Latour's Allegations

#### *Undisputed Matters*

The following matters are considered established either because they were agreed, undisputed or based on high quality evidence.

personal information

In 2014, Ms. Latour was appointed to the position of CEO.

In or around 2016, there was an independent investigation or process related to eight complaints brought against Ms. Latour after the 2015 General Election. A summary of the results of that process, prepared by the Office of the Clerk, was presented to Caucus.

In October 2018, as Ms. Latour's term as CEO was ending, the BOM decided to hold a competition for the position and **privileged** including Ms. Latour and **third party**. Second interviews were scheduled with Ms. Latour and **third party**. While Ms. Latour was waiting for her interview, she was told that no further interviews would be conducted. Her appointment as CEO was then extended.

In January 2021, the BOM made the decision to hold a competition for the position of CEO rather than reappointing Ms. Latour without competition.

#### *Ms. Latour's Additional Evidence*

The following represents an additional summary of Ms. Latour's supporting evidence.

In her 22 January 2021 Complaint, Ms. Latour described the impetus for her Complaint as follows:

I am compelled to write to you regarding a recent decision that causes me not only a great deal of personal concern but appears to be a persistence exercise to invalidate my worth, my accomplishments while serving as Chief Electoral Officer, and further prevents achieving the much-needed stability of the Office of the Chief Electoral Officer. Specifically, I am speaking of a recent decision taken by your Legislative Assembly's Board of Management (BOM) to have me compete to remain in my current position. Even though I previously qualified through a rigorously vetted human resource recruitment in 2014 and served 6.5 years in the

position, I must submit an expression of interest complete with my curriculum vitae and three letters of reference.

In her Complaint, Ms. Latour went on to describe her accomplishments in the role of CEO, including successfully delivering on two elections, as well as the innovations, recognition and awards that have characterized her tenure.

Ms. Latour concluded as follows:

In closing, I present myself to you as an educated indigenous woman born and raised in the NWT who realized an impressive career, offers a wealth of experience and holds an impeccable record. What I am is exactly what the Government of the Northwest Territories openly says they desire to see and wish to support. Assuming you are in agreement with how I present myself to you, and from one woman leader to another, please help me understand why your government is actively seeking to put me out?

Ms. Latour's subsequent 16 April 2021 statement outlined her personal and professional background and expanded upon matters raised in the 22 January 2021 Complaint, as did her investigation interview. She also raised a number of other matters, and those considered to be in scope of the mandate of this investigation have been enumerated above, in the list of allegations.

During her interview, Ms. Latour described that Mr. Mercer was not welcoming to her from the time she became CEO in 2014, and that her relationship with him was markedly different from that he had with her predecessor. She described that there was a sense of mistrust between them, and she did not feel wanted.

With respect to the General Allegation, and the matter of the independence of the OCEO, in her 16 April 2021 statement (Appendix J), Ms. Latour wrote that:

It became apparent to me through the years that the Clerk has been undermining the independence of the OCEO by manipulation and personally influencing the Board of Management (BOM). The Clerk has been able to accomplish this by strategically filtering information provided to the BOM concerning the OCEO or prevent any opportunity for the OCEO and BOM to form a relationship or effective means of communicating in order to share knowledge that would be used when rendering a decision which affect the OCEO. To address these concerns, the 18th Assembly, in December of 2016, was presented with a 'White Paper on the Independence and Accountability of Election Administration in the Northwest Territories' (Appendix T).

It was determined through the Clerk's guidance that the BOM should review the White Paper. The Clerk's decision is reminiscent of an agency investigating itself. The independence of the OCEO has still not been achieved or fully addressed.



In her evidence, relating to Allegation 1, Ms. Latour described the 2016 investigation into allegations that had been brought against her, indicating that it was accompanied by a workplace assessment. She noted that the allegations were not shared with her prior to its commencement, that the Clerk's Office wrote their own interpretation of the investigation report to present to Caucus, contrary to the investigation report's recommendation that they (Ms. Latour and the Clerk's Office) do so collectively, and that, "I was left to feel my impugned suitability as Chief Electoral Officer and personal character was never mended with members of the 18<sup>th</sup> Legislative Assembly".

With respect to Allegation 3 and the matter of her reappointments, in her 16 April 2021 statement Ms. Latour wrote:

During my tenure as CEO, I have twice been informed that the Clerk was actively working to remove me from my position. The motivation for this was to have an

third party information

Ms. Latour indicated third party information

third party  
th information

Ms. Latour described her view related to the second stage of the 2018 interview process, to the effect that the BOM did not want to shoulder the decision of not reappointing her, an experienced Indigenous woman; however, the second interview, scheduled with the Caucus, did not proceed because of the support she received from Caucus members.

Ms. Latour described a conversation with Mr. Mercer subsequent to her cancelled interview which she said led her to believe that when her tenure came up again, she would be reappointed.

It was Ms. Latour's evidence that in 2018 she was given an extension of her contract until 1 April 2021 and then another six-month extension until September 2021. She said that at the time of her investigation interviews [May and June 2021], her appointment was still not finalized and despite having expressed interest to the BOM to continue in the position, she was again asked to compete; she stated that she believes she was the successful candidate, but her reappointment is contingent on the outcome of the investigation of the Clerk.

Ms. Latour stated further that she believes she is being made to re compete for her position because she was never the preferred candidate and perhaps because she is Indigenous.

In her 16 April 2021 statement, Ms. Latour wrote that:

From the onset of my tenure [in 2014], the Clerk behaved in a manner in which it was evident he had personal issues with me. I was being intentionally ignored and underserved. This behaviour by the Clerk culminated over the years and negatively affected the operational stability and flow of information to and from the OCEO [Allegation 4].

When reviewing her draft interview summary, Ms. Latour added that her “personal and confidential” letter to the Premier [i.e. her Complaint], which was walked over by an attorney to the Premier, was leaked. She said that it was not intended to become public, nor did she intend to participate in a full-blown investigation into the Clerk’s conduct. As indicated earlier, on 9 July 2021, Ms. Latour returned her comments on her interview summary, and indicated, “...this will be my final communication and involvement with the investigation. I consider that matter closed for me...”.

#### *Mr. Mercer’s Response*

Mr. Mercer submitted a detailed Response to Ms. Latour’s allegations against him in his initial 5 May 2021 Response. This included his account of their professional interactions before and after her appointment as CEO in 2014. He described some issues that arose in their professional relationship, the 2016 complaints against her and her dissatisfaction with the conduct of the subsequent investigation [addressed under Allegation 1] as well as her dissatisfaction with the relationship between them. He described encouraging **third party** **third party** to provide Ms. Latour the opportunity to speak to **third** directly about her concerns. He noted that he (Mr. Mercer) and Ms. Latour met subsequent to the above events and agreed on a way forward.

In addition, Mr. Mercer described Ms. Latour’s accomplishments in positive terms. He stated that since their 2016 discussion, he believed he and Ms. Latour had a productive and respectful relationship and thought she shared that view until he received a copy of her 22 January 2021 letter alleging “targeted malfeasance” on his part. He stated that they had worked collaboratively on various initiatives, shared information openly and with trust, and supported one another during personal challenges.

In his 23 June 2021 Response to the allegations that were disclosed to him, Mr. Mercer addressed the General Allegation related to Ms. Latour, as well as the various specific allegations of fact. Some of these matters were already addressed in his 5 May 2021 Response. Key aspects of his evidence on these matters from both documents, as well as from his interview, are summarized below.

In his 23 June 2021 additional Response, Mr. Mercer described the various regular interactions of independent officers, including the CEO, with the Legislative Assembly. Further, he pointed out that he implemented the process for all independent officers, including the CEO, to present their budgets directly to the BOM. He noted that Ms. Latour successfully lobbied for greater access to political decision makers and that she presented a report on the independence of her office, which was referred to a committee and resulted in important changes to the *Elections and Plebiscites Act* to increase the independence and functioning of her office (Appendix T). Mr. Mercer denied that he fostered an agenda to have Ms. Latour removed, and said her suggestion he discriminated against her on the basis of race is “deeply hurtful”.

Mr. Mercer also stated:

Ms. Latour's suggestion that I have discriminated against her on the basis of her race is deeply hurtful. I know of no other way to respond to it other than by my record. Prior to this allegation it has never been suggested to me by anyone that my actions or words have been racist. The Northwest Territories is the only jurisdiction in Canada whose population is equal parts Indigenous and non-Indigenous. I take immense pride in the fact that our legislature is on the front lines of reconciliation and is an example for the entire country in terms of how public and Indigenous institutions can work together for the common good of all northerners. It has been the singular honour of my career to work in such a diverse and respectful democratic system. I hold a deep respect for the culture, history, aspirations and challenges of the Indigenous people of Canada and the NWT and call many current and former Indigenous Members and staff dear friends. I encourage you to speak to as many of these individuals as you can and am happy to provide the names of many current and former Indigenous Commissioners, premiers, speakers, ministers, members and staff who would refute this irresponsible characterization of my actions and my character.

During his Investigation interview, Mr. Mercer stated further that the CEO is one of eight Statutory Officers appointed by and reporting to the Legislative Assembly. He said that both the CEO and the Human Rights Commissioner are at arms-length from the government because they provide a service to the public. He noted that the OCEO has the greatest onus for being independent from the executive and legislative branches, given the high rate of incumbency of elections.

Mr. Mercer stated that the organizational chart of the Legislative Assembly can be difficult to interpret because there is an accounting organizational chart and a reporting organizational chart. He said that the CEO's and other Statutory Officers' places in these charts are determined by the *Financial Administration Act* and the *Public Service Act*. He said that the OCEO is funded through public funds appropriated by the Legislative Assembly and its staff members are members of the Territorial Public Service. He said that by contrast, the CEO is not a member of the Territorial Public Service. He said that organizationally, the independent Statutory Officers rely on the OC as the deputy head for the day-to-day management of funds, and it is a primarily administrative relationship. He said that on certain occasions, the relationship between the OC and the Statutory Officers expands beyond this. He explained that these would be in cases where someone needs to be appointed without competition based on a decision of the Cabinet or the BOM or in circumstances when the Speaker needs to get involved due to serious performance issues.

Mr. Mercer stated that the Clerk is not accountable for the day-to-day management of all eight Statutory Officers. He said that the Statutory Officers have small offices that are combined in one location to have services provided by the Legislative Assembly and these offices have no finance or HR staff. He said that the Statutory Officers report to the Legislative Assembly through the Speaker. He explained that the Speaker chairs the Board of Management, and that all other administrative responsibilities are delegated to him as the Clerk.





privileged were interviewed including Ms. Latour and third parties privileged

privileged

Mr. Mercer stated that he had no stake in the appointment of either candidate, and he denied that party was a friend of his third party. third party asked if he should apply for the position, he (Mr. Mercer) said he should, and they never discussed it again. He stated that he recused himself from the process because Ms. Latour had previously made allegations of bias against him, and that he only became involved given the above-described political impasse; he noted that his intervention at that time was to Ms. Latour's benefit.

To further demonstrate that he did not undermine Ms. Latour's reappointment, at any time, Mr. Mercer noted that he did not advise the BOM privileged

privileged

In addition, Mr. Mercer stated that when Ms. Latour spoke to him in fall 2020 about her plan to move the OCEO from Yellowknife to Hay River if she was reappointed, he supported her and was so confident she would be reappointed that he began to informally recommend the office space in Yellowknife for other independent officers. He explained, however, that when he approached the BOM about her reappointment in January 2021, given that her term was expiring [Allegation 3b], they directed him to put it out to competition, as is the current BOM's policy for all public appointments. privileged

privileged

Mr. Mercer described that upon subsequently hearing feedback from third party that Ms. Latour thought he was trying to undermine her and prevent her reappointment, he emailed Ms. Latour on 11 February 2021 [quoted in Mr. Mercer's Response] not finding out about her 22 January 2021 Complaint until the next day, 12 February 2021, when it was provided to the media.

Mr. Mercer noted that Ms. Latour could be challenging to work with and that he had a different relationship with her than with her predecessor, with whom he worked closely. He described further that he kept a professional distance from Ms. Latour due to her vigorous assertion of independence from his Office; he said that, "Ms. Latour was a great proponent of the independence of her office, and rightly so". His specific evidence was that he was unaware of any delay related to job descriptions [Allegation 4a], of the issues related to submitting invoices [Allegation 4c] and

did not recall the matters she described related to the duties of the shared position or failing to communicate information [Allegations 4d and 4e]. He explained that the entire government, including the Legislative Assembly, was the subject of two widespread expenditure reduction exercises during his tenure as Clerk, that any reductions to Elections NWT budgets would have been implemented at the direction of the BOM and consistent with what was happening across government and that Ms. Latour herself recommended the required budget cuts [Allegation 4b]. He indicated that others, including principally Ms. Wickens, could comment further on these matters.

In his 5 May 2021 initial Response, Mr. Mercer concluded his response related to Ms. Latour as follows:

My relationship with Nicole Latour dates back nearly 18 years. It has not always been smooth. She is a big personality with strong views that have not always been consistent with mine or the Members we both serve. In all my dealings with her I have exercised my duties with professionalism, fairness and objectivity. As I have always endeavored to do, I gave the best and most objective advice I had to offer and carried out the direction of the Board faithfully and without bias or malice. It is unfortunate that she has attempted to paint my actions in the events concerning her reappointment in such a negative way. Her public accusations of 'targeted malfeasance' against me are serious, damaging and, in my view, wholly without merit.

#### *Witness Evidence*

Attempts were made to contact relevant witnesses who Ms. Latour named, including **third parties** but they did not participate in the Investigation.

**third party**



**Mr. Rutland** stated that Mr. Mercer was not involved in the 2017 complaints against Ms. Latour [Allegation 1]. He said that as the Deputy Law Clerk at the time, he (Mr. Rutland) provided advice

to the BOM about how to approach the complaints, which had been sent to several MLAs, including some that went directly to other BOM Members. He said that one was also sent to the Premier of the time.

Mr. Rutland stated that the BOM **privileged** **privileged**. He said that the complainants were not prepared to put their names on a formal complaint. He said that he contacted Labour Relations for a recommendation for a third-party investigator to conduct the workplace assessment. He said that the NTLA contracted HR Atlantic based on LR's recommendations.

**third party** **third party**. He said that after the assessment was completed, he prepared a summary based on the assessment report and provided the BOM and the Caucus with copies of this summary. He said that he drafted the summary because he was managing the process from the beginning. He said that he did not recall that the report recommended the OC and the OCEO preparing a summary jointly.

Mr. Rutland stated that Mr. Mercer wanted the process to be independent, and so he (Mr. Mercer) was not involved in the process at any stage. Mr. Rutland said that Mr. Mercer left the room when the complaints were discussed during BOM meetings.

*Ms. Wickens* explained [related to Allegation 2] that she is the main point of contact for the Statutory Officers in the OC, but that she has no supervisory authority over these independent officers. She said that she deals with the standardization of their pay and benefits through legislation. She said that she also negotiates their employment contracts and addresses any operational questions they may have during their employment. She said that she helps the Statutory Officers with their annual reports, budget requests, and any matters related to the GNWT. She stated that the CEO is accountable to the Legislative Assembly.

Ms. Wickens stated that as the Deputy Clerk, it was her role to communicate between the OC and the Statutory Officers. She said that Mr. Mercer very rarely had direct communications with the Statutory Officers, including the CEO.

Ms. Wickens stated that Mr. Mercer was excited about Ms. Latour's proposal to move the Elections NWT office to Hay River [related to Mr. Mercer's evidence with respect to Allegation 3]. She said that he thought the BOM would appreciate this idea, because the BOM wanted to decentralize their services from the Territorial capital to the communities. Ms. Wickens referred to an email on this subject which she said she wrote to Ms. Latour on 5 January 2021; she stated she could not find the email, but she described it as follows:

I notified the CEO of the Board's desire to initiate a competition for the appointment of Chief Electoral Officer following the expiry of her term and that the Board is aware of her desire to continue on in the role and encouraged her to re-apply for reappointment. I advised her that the Board would like to see the office located outside of the Capital which was also a desire of the CEOs so encouraged her to highlight this in her cover letter if she choose to reapply.

With respect to the matter of job descriptions [Allegation 4a], Ms. Wickens stated that Ms. Latour submitted them in December 2020, and she told Ms. Latour something along the lines of, "Well, you might want to wait for your budget to be approved for these positions". She said that Ms. Latour sought her (Ms. Wickens') advice on two options, and ultimately made the decision to hold the job descriptions (emails dated 8 August 2020, 3 November 2020, and 26 November 2020 provided concerning the OCEO budget, Appendix U). Ms. Wickens stated that it was inaccurate that Mr. Mercer told Ms. Latour, "Your staff is my staff" in the context of this matter.

Ms. Wickens stated that she coordinated with the Statutory Officers on their 2020-2021 fiscal year budget and that after the 19<sup>th</sup> Assembly elections, the CEO budget was decreased at Ms. Latour's request. She said that Ms. Latour wanted to let all staff go; she explained that all staff at the OCEO were on term contracts and Ms. Latour let their terms expire. Ms. Wickens said that the BOM wanted the OCEO to have a six-month DCEO position, to ensure the continuity of the Office should the CEO not apply for reappointment or should the BOM choose not to reappoint her; however, Ms. Latour did not staff this position.

Ms. Wickens stated, with respect to the allegation that Mr. Mercer subjected Ms. Latour's office to budget cuts for benefits and compensation, which prevented her (Ms. Latour) from filling the DCEO position and led to high staff turnover in the OCEO [Allegation 4b], that Ms. Latour did not ask for this position. She said further that the Clerk does not create these positions. She said that the email exchange she had with Ms. Latour about this matter showed that Ms. Latour submitted her proposals to the BOM. Ms. Wickens said that Ms. Latour's every ask was approved, including the two new positions in 2021-2022. She said that the only decision the BOM provided over and above her asks was to give her additional resources in 2020-2021 in the form of a six-month DCEO position. Ms. Wickens said that BOM did this so that Ms. Latour could staff the position within the last six months of the year (email dated 11 January 2020, Appendix V).

Ms. Wickens stated that Mr. Mercer was not in the office when Ms. Latour submitted her invoice in April-May 2021 [Allegation 4c] and was not involved in its processing for reimbursement. She said that Mr. Mercer's duties were being carried out by the Acting Clerk in the winter and spring of 2021. She said that she sought advice from the Acting Clerk and the Law Clerk on this matter. Ms. Wickens stated that the invoice they received from Ms. Latour regarding legal support for her participation in this Investigation was unusually high and needed verification. She said that it was her job to flag any unusually high bills for verification, and she flagged Ms. Latour's invoice submission because it seemed strange to have such a high amount on the invoice. She said that subsequently, she verified the invoice, followed up with Ms. Latour directly by email, and Ms. Latour was reimbursed (emails dated 13 May 2021 and 18 May 2021, Appendix W).

Ms. Wickens stated that she had no knowledge of a shared staff position between the OC and the OCEO [Allegation 4d].

With respect to the matter of Mr. Mercer failing to communicate necessary information [Allegation 4e], Ms. Wickens stated that it is her role to relay any information from the OC to the Statutory Officers. She said that she created an electronic distribution list to be able to reach everyone during COVID. She said that this list included Ms. Latour.



Regarding the amendment of the *Elections and Plebiscites Act* by another bill, Ms. Wickens stated that Ms. Latour was referring to the *Standardization Act*, which was amending the *Elections and Plebiscites Act*. She said that she sent the *Standardization Act* to Ms. Latour before it went to the Legislative Assembly for comments. She said that Ms. Latour agreed with the amendments as outlined in her email (email dated 11 September 2020, Appendix X). With respect to the matter of the reading of Ms. Latour’s 2019 Election report to the House, Ms. Wickens stated that she typically shares the information about when a Statutory Officer’s report is read to the Legislative Assembly. She said that she did not recall letting Ms. Latour know about the reading of her (Ms. Latour’s) report on the 2019 Election. She said that she did not know if the other Deputy Clerk did this.

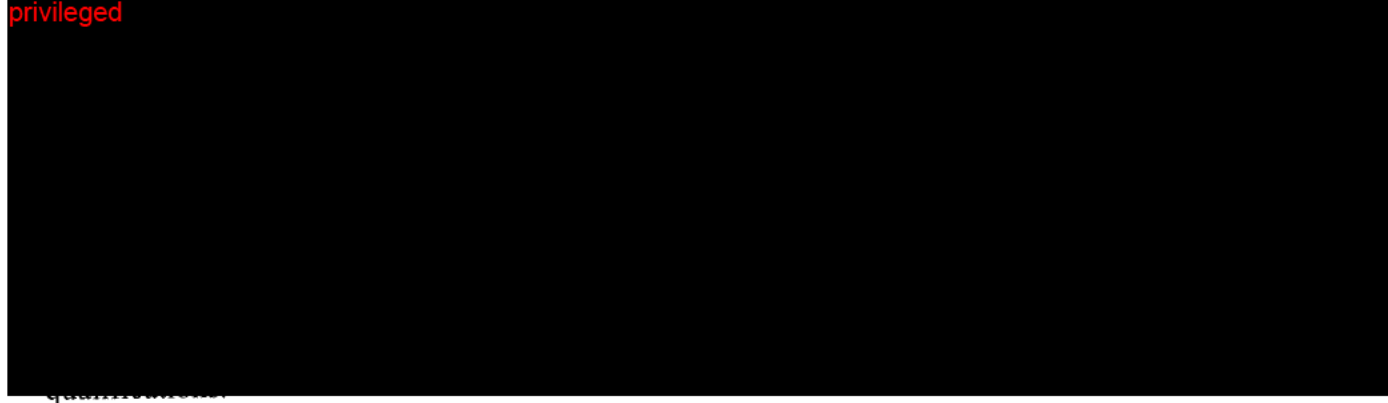
Current MLA



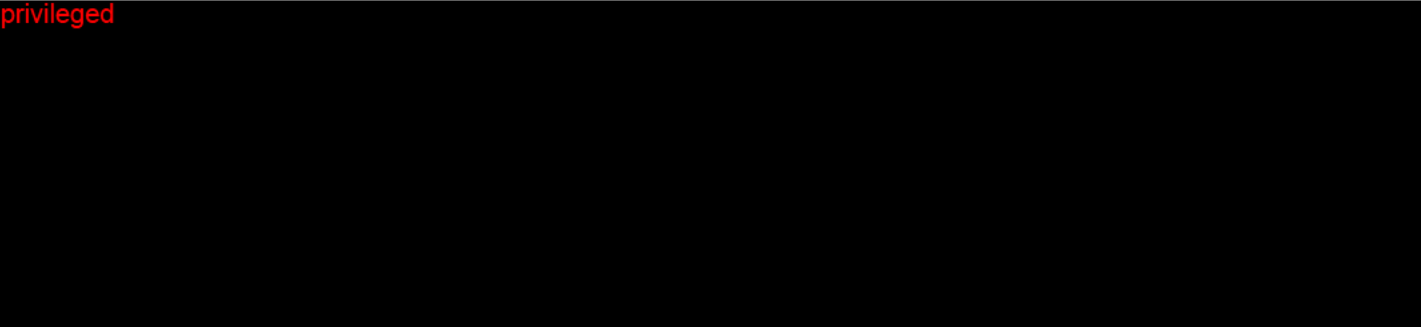
When asked about Mr. Mercer allegedly isolating Ms. Latour and the OCEO from the BOM [Allegation 2], Current MLA stated that Mr. Mercer did not have such an influence on the BOM. said that when the BOM wants to meet with someone, including Statutory Officers, they ask the Clerk to set up the meeting. said that if the BOM wanted to meet with Ms. Latour, they would.

Current MLA stated that the CEO’s role is somewhat different from other Statutory Officers. said that the CEO’s role becomes more prominent during election years, whereas Statutory Officers such as the Languages Commissioner and the Human Rights Commissioner work with constituents and MLAs on a more day-to-day basis. said that matters related to these Statutory Officers were consequently more time sensitive.

privileged



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**Current MLA** stated that [redacted] was dumbfounded when [redacted] read how Ms. Latour described the BOM’s decision to hold a competition for the CEO position in her (Ms. Latour’s) letter to the Premier dated 22 January 2021, that she (Ms. Latour) subsequently sent to all members of the NTLA on 12 February 2021. **Current MLA** said that her (Ms. Latour’s) allegations did not correspond to [redacted] memory of the discussions that happened during the BOM meeting.

**Current MLA** stated that [redacted] interactions with Mr. Mercer and the OC staff have been positive. [redacted] said that the staff (researchers and advisors) help the MLAs and that Mr. Mercer ensures that the MLAs have accurate information about what they can and cannot do. [redacted] said that Mr. Mercer has the best interests of the MLAs and the NTLA at heart. [redacted] said that [redacted] had a good working relationship with Mr. Mercer, who was supportive when [redacted] encountered difficult situations, including family crises.

**Former MLA** evidence, provided through [redacted] written response to specific questions, was that the Members of the BOM were independently elected, and that Mr. Mercer provided the Board support, as well as advice when asked to do so. [redacted] stated [redacted] did not believe Mr. Mercer in any way undermined the OCEO or any other office of the Assembly, nor did [redacted] believe Mr. Mercer would interfere with the duties of a Statutory Officer or prevent them from appearing before the Board [Allegation 2].

**Former MLA** stated that while [redacted] found the Statutory Officers to be professional and understood their roles, [redacted] “Did not have this impression from the CEO” and therefore as [redacted] information [redacted] felt they had to make a change. [redacted] described Ms. Latour as “quite pushy”, trying to have her own little fiefdom” and said [redacted] believed this to be a case of one Officer “not getting their way” and “wrongfully assuming the Clerk made the decision”. He noted that in the [redacted] personal identity [redacted] was a Member of the Assembly, [redacted] always believed Mr. Mercer acted in the best interest of the Assembly.

**former MLA** information [redacted] stated that in 2018, Mr. Mercer acted on the BOM’s [redacted] BOM - privileged [redacted] BOM - privileged [redacted]

Analysis and Findings Relating to Ms. Latour’s Allegations

*Overview*

Prior to conducting an analysis of the evidence and making findings of fact, the following matters should be highlighted:

- Relevant witnesses named by Ms. Latour declined to participate;
- In validating her Investigation interview summary, Ms. Latour stated that her letter to the Premier was leaked and she did not have any intention of participating in an investigation into the Clerk’s conduct;
- She indicated she did not wish to participate further in the Investigation after validating her summary.

A number of Ms. Latour's allegations, as summarized by the General Allegation and Allegations 2 and 4, focus on the function of the Clerk and his Office, the manner in which he carried out his duties with respect to a Statutory Officer, the CEO and her Office, as well as alleged improper influence of the Clerk on the BOM. In this regard, she described Mr. Mercer isolating her from the BOM, intentionally ignoring her and underserving her. It is therefore important to highlight that the purpose of this Investigation is not to interpret or conclude upon the role of the Clerk, or to pronounce upon the manner in which the Clerk is expected to carry out his responsibilities. Therefore, in the context of this Investigation and within the scope of Quintet's mandate, for Ms. Latour to meet her burden in proving the merit of her allegations against Mr. Mercer in this regard, there would have to be evidence of ill-intent on his part. For further clarity, rather than this being simply an issue of Ms. Latour disagreeing with decisions Mr. Mercer made with respect to the OCEO or about the nature of advice he provided to the BOM, or even of poor management on his part, it would have to be established that Mr. Mercer was in some way abusing the power of his position in relation to Ms. Latour, as described by Allegation 1, related to Mr. Mercer encouraging a complaint against her, and Allegation 3, related to Mr. Mercer indicating to several other individuals that he wanted to remove Ms. Latour from her position and working actively to do so. Thus, the evidence related to Allegations 1 and 3 will first be considered.

#### *Allegations 1 and 3*

The evidence Ms. Latour presented related to these two Allegations was based in large part on second-hand information – what she said she was told by **third parties**. However, as previously stated, despite efforts to obtain their evidence, these individuals did not participate in the Investigation.

With respect to Allegation 1 and the investigation that was conducted into complaints against Ms. Latour, in addition to saying Mr. Mercer encouraged the complaints against her, Ms. Latour objected to the way the investigation was carried out, and the manner in which the results were communicated to the BOM.

Mr. Mercer denied the factual basis of the allegation and presented a complete and compelling description of the events related to these matters.

The evidence is inconsistent as to whether there was both an investigation and a workplace assessment (as described by Ms. Latour and Mr. Mercer) or whether there was only a workplace assessment (as described by Mr. Rutland and implied by **third party** evidence). However, this point is not considered essential to a finding on the matter; what is at issue is Mr. Mercer's involvement. Witness evidence, where available, supported Mr. Mercer's version of events in this regard: that Mr. Rutland, not Mr. Mercer, was responsible for putting in place the contract that arose as a result of the complaints that were brought forward related to Ms. Latour, by a number of individuals. On the other hand, the witnesses named by Ms. Latour did not participate. Therefore, the available evidence did not establish that Mr. Mercer was involved in the resolution of these matters; rather, it is considered proven, based on the supporting evidence of Mr. Rutland and to some degree that of **third party** that Mr. Rutland, as Law Clerk at the time, was instrumental in bringing this issue to closure. Mr. Mercer's evidence that he informed a potential complainant that they should put their complaint in writing if they wished it to be investigated



would be considered appropriate under the circumstances of an individual raising concerns to him and could not be considered “encouraging a complaint”.

Despite Ms. Latour’s apparent understanding that she would have input into the presentation of the results of the investigation to the BOM, the evidence of Mr. Rutland did not support that this was the case. Further, the available evidence does not establish any role played by Mr. Mercer in this regard.

Given the number of complaints related to the CEO that were brought forward at that time, the evidence does not establish that the decision to engage independent investigators to assess the situation (whether through an investigation or through a workplace assessment) was inappropriate, nor does it establish that Mr. Mercer played a role, direct or indirect, in the BOM’s decision to do so, or in the manner in which the results were presented to the BOM.

Thus, based on an analysis of the available evidence, it is not established on a balance of probabilities that Mr. Mercer encouraged a complaint against Ms. Latour or that he was involved in the efforts undertaken to resolve any complaints brought forward.

With respect to Allegation 3, Ms. Latour objected to having to compete for her position in 2018, rather than being reappointed. She stated that this was part of Mr. Mercer’s efforts to remove her from the position of CEO and replace her with his preferred candidate; however, other than her perception that this was so, apparently based in part on what she was told by **third parties**, **third parties** there was no specific, compelling evidence to support that this was the case. **third parties** and **third parties** did not participate in the Investigation.

On the other hand, Mr. Mercer described the advice he provided to the BOM and the reasons for their decisions with respect to Ms. Latour’s reappointment and the competitions for the position of CEO, as well as his support of Ms. Latour within the bounds of his role. Mr. Mercer’s evidence on these matters was detailed, nuanced and presented a logical and plausible sequence of events. The evidence of Ms. Wickens supported Mr. Mercer’s description of supporting Ms. Latour’s intention to move the OCEO to Hay River; by extension, this could reasonably be seen as support for Ms. Latour continuing in the role of CEO. The evidence of other witnesses, **former MLA** and **current MLA** convincingly establishes that the BOM made the decision to hold the competition, that Mr. Mercer did not improperly influence that decision and that any input he provided was informational in nature. Finally, **current MLA** evidence that **curre** was “dumfounded” upon reading Ms. Latour’s account of these events in her 22 January 2021 letter, which did not coincide with **urrent MLA** own recollection, was compelling and lends further support to Mr. Mercer’s version of events.

Thus, based on an analysis of the available evidence, it is not established on a balance of probabilities that Mr. Mercer actively worked to remove Ms. Latour from the role of CEO.

### *Allegation 2*

With respect to Allegation 2 and Ms. Latour’s assertion that Mr. Mercer isolated her and the OCEO from the BOM and the examples that Ms. Latour provided to illustrate this, Mr. Mercer provided

evidence of the way all the independent officers interacted with the BOM. This was plausible, and consistent with the general evidence of Ms. Wickens, **current MLA** as well as that of **Former MLA**. It should be noted that the evidence of **current MLA** and **current MLA** related to Ms. Latour suggests that Ms. Latour's interpretation of these matters did not coincide with their view of the situation; their evidence casts Ms. Latour's actions related to raising these matters in a somewhat negative light. The evidence of Ms. Wickens related to these matters describes her role as the main point of contact for all the Statutory Officers and the limited involvement of Mr. Mercer. Further, under this allegation and elsewhere where there was specific witness evidence available, most notably that of Ms. Wickens under Allegation 4, and Mr. Rutland under Allegation 1, it supported Mr. Mercer's version of events.

#### *Allegation 4*

With respect to Allegation 4, and the matter of Mr. Mercer intentionally ignoring Ms. Latour and underserving her, and the examples that Ms. Latour provided to illustrate this, Mr. Mercer's general response that he was not involved in these matters was supported by the evidence of witnesses, particularly that of Ms. Wickens. Her detailed and specific evidence, supported in a number of instances by documentary evidence (email exchanges with Ms. Latour), undermines Ms. Latour's allegations against Mr. Mercer in this regard.

Thus, based on the available evidence, it is not established that Mr. Mercer isolated Ms. Latour and the OCEO from the BOM, nor is it established that he intentionally ignored Ms. Latour and underserved her.

#### *General Allegations and Discrimination*

The foundational aspects of Ms. Latour's Complaint, described under Allegations 1 and 3, are not established. There is a lack of compelling evidence to support Ms. Latour's contentions related to the way Mr. Mercer exercised his role and responsibilities as the Clerk, as described under Allegations 2 and 4, and the allegations of fact she presented are not considered to be proven on a balance of probabilities, for the reasons described above. As previously stated, it is outside the mandate of the Investigation to pronounce on the mandate of the Clerk.

Ms. Latour's statement that she believes Mr. Mercer wanted to remove her because she is Indigenous represented a serious allegation that was carefully considered. In this regard, Ms. Latour provided evidence that in 2014 or 2015, a former employee recounted a staff meeting where they felt discussions amongst Mr. Mercer and his staff about another Statutory Officer had racial undertones. Given the lack of specific evidence provided by Ms. Latour relating to any action on the part of Mr. Mercer, Mr. Mercer's credible and very forceful denial and the overall tenor and nature of the evidence gathered for the purpose of this Investigation, after careful consideration, it was determined that witness interviews were not required to conclude on this matter. Ultimately, Ms. Latour did not make a *prima facie* case that Mr. Mercer's conduct related to her race or any other prohibited ground of discrimination. While Quintet was careful to treat the evidence gathered for the purpose of the Review and Investigation separately, it is deemed appropriate to note here that Mr. Mercer is seen by many in the OC as a champion for Indigenous people. The Investigation

Team was not presented with any credible evidence that any of Mr. Mercer's conduct was motivated by racism. Therefore, this aspect of the Complaint is not considered founded.

#### Conclusion Relating to Ms. Latour's Allegations

Taking these findings into consideration, the allegations contained in Ms. Latour's Complaint against Mr. Mercer are considered to be not founded.

#### **ii) Mr. Norn's Allegations Against Mr. Mercer**

The allegations summarized below are based on Mr. Norn's 15 February 2021 Complaint and the 15 April 2021 statement submitted to Quintet on Mr. Norn's behalf, as well as on clarifying information gathered during Mr. Norn's Investigation interview.

#### Allegations

##### *General Allegations*

Mr. Norn generally alleges that when he and other MLAs push back on Mr. Mercer's undue influence, referring to Mr. Mercer's attempts to make unilateral decisions regarding matters that fall under the MLAs' responsibilities, including the selection of cabinet members, the appointment of Statutory Officers, the political management of committees, Mr. Mercer has lashed out and used anger and demeaning language.

##### *Specific Allegation of Fact*

Mr. Norn more specifically alleges that on 14 October 2020, he and Mr. Mercer had an argument at the Caucus meeting and during the discussion about the **personal and third party information** **personal and third** Mr. Mercer acted aggressively and in an intimidating manner towards him.

#### Summary of Evidence Related to Mr. Norn's Allegations

As stated previously, Mr. Norn's 15 February 2021 Complaint, which was made in the form of press release and statement and his 15 April 2021 statement were carefully considered, including his description that other individuals were affected by Mr. Mercer's alleged conduct. As explained above, efforts were made to follow up with those individuals directly. During Mr. Norn's Investigation interview, clarification was sought to determine the specific behaviours on the part of Mr. Mercer that were allegedly directed at Mr. Norn.

Based on the information gathered, the findings related to Mr. Norn will be limited to the allegation related to the 14 October 2020 exchange.

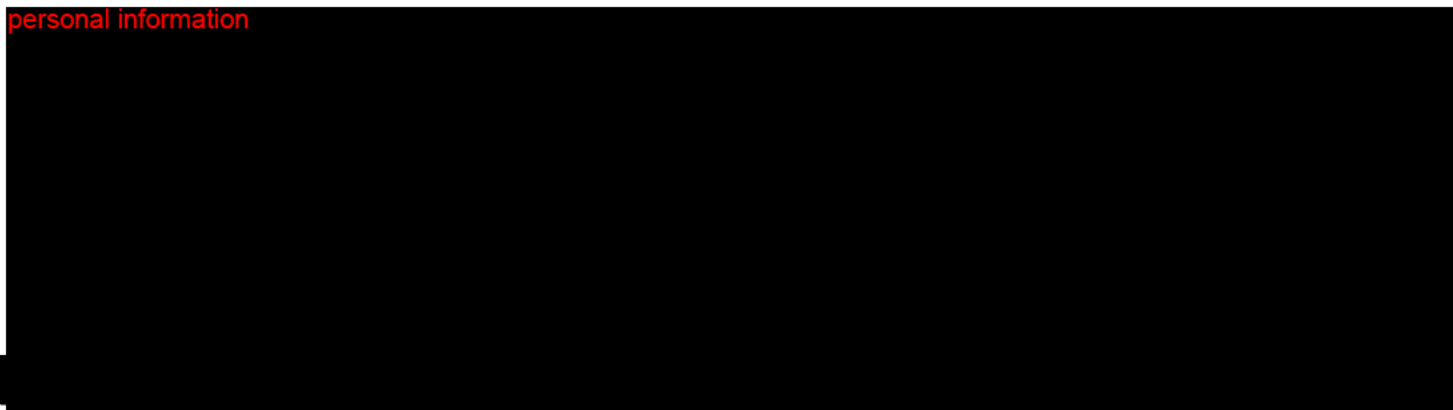
However, in their evidence, both Mr. Norn and Mr. Mercer described events that occurred before and after the events of 14 October 2020. These matters were considered important for an understanding of the situation as a whole and are thus summarized below.



*Undisputed Matters*

The following matters are considered established either because they were agreed, undisputed or based on high quality evidence.

personal information



Some time around May 2020, the committee of non-Cabinet members introduced non-confidence votes related to three Ministers, then decided to proceed with only one, related to Ms. Nokleby, which was subsequently withdrawn after Mr. Norn sought Mr. Mercer's advice.

Mr. Norn later informed <sup>third party and personal information</sup> ~~third party and personal information~~

In late August 2020, the Legislative Assembly was recalled to consider another motion of non-confidence relating to Minister Nokleby. When it passed, Mr. Norn wanted to let his name stand for nomination to replace her. After conferring with Mr. Mercer, the Speaker ruled Mr. Norn's nomination out of order since he was not considered to represent a "Yellowknife" constituency. In response to this, Mr. Norn rose and stated words along the lines, "This is not the first time as an Aboriginal man I have been mistreated by the system" (according to Mr. Norn's evidence, or, according to Mr. Mercer, "This is not the first time I have been stifled as an Aboriginal man").

third party and personal information



Subsequently, at a Caucus meeting on 14 October 2020, <sup>privileged - caucus</sup> ~~privileged - caucus~~

On or around 20 October 2020, <sup>privileged - caucus</sup> ~~privileged - caucus~~

On 11 December 2020, Mr. Norn requested an in-camera session for a meeting with the BOM, and

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On 11 February 2021, allegations against Mr. Mercer on the part of Ms. Taylor and Ms. Latour were brought to the attention of the BOM.

On 12 February 2021, Mr. Mercer issued a statement to the media concerning the allegations against him.

On 15 February 2021, Mr. Norn held a press conference and released a statement concerning Mr. Mercer (considered Mr. Norn's Complaint).

#### *Summary of Mr. Norn's Evidence*

As indicated earlier, Mr. Norn's Complaint was in the form of his 15 February 2021 press release. In his press release, he described that he is an Indigenous man, and that, "It goes without saying that honour, integrity and truthfulness are paramount to my people and are values I carry with me as I work on behalf of my constituents". He indicated that, "The Legislative Assembly of the Northwest Territories has become infested with an ethical rot that is undermining the wellbeing of staff, elected officials and even our democracy" and went on to describe behaviours on the part of the Clerk (Mr. Mercer), including abuse of authority, intimidation, threatening behaviour and physical violence. He described a pattern of abuse and mismanagement and referred to two recent complaints made against Mr. Mercer by staff under his management. He described his attempts to have the BOM launch a third party investigation into Mr. Mercer's conduct; he further stated that given the BOM's lack of action, and Mr. Mercer's continued intimidating behaviour and retaliatory actions against those who had raised allegations, he was calling for Mr. Mercer's immediate resignation or dismissal.

Mr. Norn concluded his press release by stating:

I would also like to ask any past or former employees of the Legislative Assembly over the past 14 years to come forward. If you worked in that timeframe and experienced any physical abuse, intimidation, or harassment while working here, I encourage you to come forward. You can contact me directly and I will ensure your grievances are heard.

Mr. Norn subsequently submitted, through his legal counsel, a statement dated 15 April 2021, which further detailed his allegations (Appendix K). He participated in an Investigation interview on 14 May 2021; the summary from that interview is found at Appendix M.

In his 15 April 2021 statement and during the Investigation interview, Mr. Norn provided background information, both personal and professional, and described his knowledge of the Northwest Territories and its diverse population. He indicated he was elected to the 19th Legislative Assembly, representing the constituency of Nedhé-Wiilideh and the communities of Dettah, N'dilo, Lutsel K'e, and Deninu K'ue.



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Mr. Norn described speaking to Ms. Taylor [subsequent to his 15 February 2021 news conference], that she told him she was going to submit a complaint as well, and he told her, “This will come out and we will tell our stories,” “I’ve had enough of this asshole,” and, “We need to feel safe at work and be free of violence, bullying, and lateral violence”. He said that he did not know how this could go on for so long and that Mr. Mercer thinks he can work with impunity.

When asked about the “slandorous remarks he [Mr. Mercer] made about me”, Mr. Norn stated that he was in fact referring to Mr. Mercer’s remarks about others: specifically, Mr. Mercer stating during mediation that **privileged - mediation** [details provided but not included]; and Mr. Mercer’s comments about **third party**. He said that they were not getting anywhere, because Mr. Mercer could not prevent himself from slandering **third**. He said that this is not done in his culture, that it is “verboden”, and that “you [referring to Mr. Mercer] do not get to go after anybody in my camp”. He said that he could not believe it, and he had enough and that led to the 15 February 2021 news conference.

Mr. Norn said that not even two hours after the 15 February 2021 news conference, he received a letter from Mr. David Jones, Integrity Commissioner, that said that he (Mr. Norn) had breached protocol and leaked information from the mediated sessions, **privileged - mediation**. He said that he does not remember signing a non-disclosure agreement, or anything to do with the sessions being confidential. He said that he could not believe how quickly they reacted to his news conference, and he said it had to do with Mr. Mercer’s relationship with the Statutory Officers.

Mr. Norn described that he wants to be the voice of the people who are not here anymore, and he **third party**

Mr. Norn expressed the opinion that Mr. Mercer has clearly crossed ethical and criminal lines and that this behaviour is ongoing. He said that his request [in his 15 February 2021 statement] that Mr. Mercer resign was an attempt to protect the Office of the Clerk from “further disrepute”.

Mr. Norn concluded:

[...]

My concerns are in regards to the deliberate tampering with the TOR to exclude past complaints, the manipulation by Speaker Blake and the Clerk's Office, and the influence Mr. Mercer continues to exert over the Board and many MLAs who will, ultimately, decide his fate.

Mr. Norn stated further that he has been attacked in the media, and his family have been negatively affected, and that "this started because of Mr. Mercer".

Mr. Norn said that some staff will say that Mr. Mercer is great, but that investigators "should listen to the pain"; he said that Mr. Mercer has ruined countless lives and it does not affect him (Mr. Mercer) at all. He said that Mr. Mercer presents as a very caring person until he is not, and "there is a slow boil and all of a sudden it turns into something different and explodes on you".

#### *Summary of Mr. Mercer's Response*

In his 23 June 2021 additional Response, Mr. Mercer addressed Mr. Norn's General Allegation as follows:

My role in the selection of cabinet members [and] the appointment of statutory officers has been detailed in my earlier written response. I accept that I play an important and critical role in these processes. I am, however, at a loss as to how my role in these matters could be described as 'unilateral.' These are high level political matters that members are keenly aware of and jealously and properly protect their ultimate and absolute decision making authority over. I facilitate these processes, give apolitical advice and implement the final decisions. But these are political decisions of the highest order. The suggestion that I make unilateral decisions with respect to them is absurd. I do not understand what is meant by 'the political management of committees.' Each committee is chaired by an elected Member and supported by a procedural clerk and research advisor. I have not attended a meeting of a standing committee in well over three years. I delegate this responsibility almost entirely to the Deputy Clerk. I have not met with a chair of a standing committee to discuss that committee's business in recent memory. If I have ever done so it would be the result of having been approached by the chair and likely about a matter related to resourcing of the committee, not its day to day functions. I suspect that Mr. Norn's reference to me 'lashing out and using anger and demeaning language,' is in reference to the October 14, 2020 Caucus meeting

privileged - caucus



privileged - caucus

In his 5 May 2021 initial Response, Mr. Mercer described the actions taken in the period March to May 2020 related to the start of the COVID-19 pandemic, including the stress involved for Members and staff of the Legislative Assembly and the suspension of the March sitting. He explained the personal stress he himself was experiencing in March 2020, and the events leading to his disagreement with [redacted] he stated that he [redacted]

personal information

third party information

th

Mr. Mercer described matters which arose when the sitting resumed in late May 2020: the committee of non-cabinet members, chaired by Mr. Norn, intending to introduce motions of non-confidence related to several Ministers, which were ultimately withdrawn after Mr. Norn sought his (Mr. Mercer's) views on the matter; and an increasing trend of breaches of the conventional Caucus confidentiality on the part of a small group of MLAs. [redacted]

third party

third party

third party

Mr. Mercer described that when one of the above Ministers, Ms. Nokleby, was withdrawn from Cabinet subsequent to another motion of non-confidence in August 2020, Mr. Norn indicated he wished to let his name stand for nomination to replace her; Mr. Mercer recommended the Speaker [redacted]

privileged advice

privileged advice

He stated that after conferring with Mr. Mercer, the Speaker ruled Mr. Norn's nomination out of order, and Mr. Norn looking directly at him (Mr. Mercer), and stated, "This is not the first time I have been stifled as an Aboriginal man."

Regarding the incident of 14 October 2020, Mr. Mercer described his and the OC's role in the BOM's recruitment process for independent officers, [redacted] but indicated that he had no formal role in the decision-making process. He described that the BOM makes a decision after which their recommendation is vetted by Caucus before a formal appointment motion is introduced on the floor of the House, to allow any objections to be voiced privately. His evidence was that Mr. Norn approached him about a friend. [redacted]

privileged & third party

privileged & third party

privileged & third party

ivi



privileged & third party



Mr. Mercer stated:


privileged - caucus




In his 23 June 2021 additional Response, Mr. Mercer denied acting aggressively or in an intimidating manner towards Mr. Norn, while acknowledging that he spoke to Mr. Norn in a defensive tone.

Mr. Mercer described Mr. Norn subsequently speaking about the incident to other Members as well as staff of the Legislative Assembly, indicating that he felt he (Mr. Mercer) owed him an apology and **privileged - caucus** Mr. Mercer also indicated that details of the incident were shared with the media. He described emailing Mr. Norn to offer an apology for the tone he had used on 14 October 2020 and for pointing his finger.


Further, Mr. Mercer stated that Mr. Norn raised the issue again at a Caucus **privileged - caucus**  
**privileged - caucus**



Mr. Mercer described Mr. Norn **privileged - BOM**  
**privileged -** 1 December 2020 BOM meeting **privileged - BOM**  
**privileged - BOM**



Mr. Mercer described that this was followed by their participation in two mediation sessions **privil**  
**privileged - mediation** **privileged - mediation**



privileged - mediation

privileged - mediation

privileged - mediation

Mr. Mercer noted the mediator, privileged - mediation  
privileged - mediation

Mr. Mercer’s evidence related to the subsequent events of February and March 2021 has been summarized earlier in this Report, in the section “General information provided by Mr. Mercer”.

*Witness Evidence*

In his evidence Mr. Norn described alleged behaviour on the part of Mr. Mercer that was directed at other MLAs, which was broadly captured under the “General Allegation”. As indicated earlier in this Report, efforts were made to contact those named MLAs to provide them the opportunity to speak on their own behalf; however, none of the individuals named chose to participate in this regard, with the exception of third party [described further below].

In addition, as described above, it is undisputed that Mr. Norn put out a call for those who had negative experiences with Mr. Mercer to come forward. One individual contacted the Investigation Team, and provided a statement through Mr. Norn’s counsel, but the events she related dated back

to 2003-2004 and were considered out of scope of this Investigation based on the aforementioned criteria that were applied to review the admissibility of allegations.

third party provided a statement on 28 May 2021 to third party  
third party

third party concluded by writing:

third party

current MLA stated that was present during the 14 October 2020 Caucus meeting, privileged - caucus  
privileged - caucus

privileged - caucus

current MLA stated that when the Legislative Assembly is in session, there are a lot of heightened emotions. said that the days are always packed, and MLAs and staff all work 15-hour days during sessions. said that this impacts how people engage with one another.

current MLA stated that interactions with Mr. Mercer and the OC staff have been positive. said that the staff (researchers and advisors) help the MLAs and that Mr. Mercer ensures that the MLAs have accurate information about what they can and cannot do. said that Mr. Mercer has the best interests of the MLAs and the NTLA at heart.

### Analysis and Findings Relating to Mr. Norn's Allegations

#### *General Allegation*

Overall, as described elsewhere in this Report, considerable efforts were made to investigate Mr. Norn's broader allegation against Mr. Mercer. In this case, Mr. Norn was largely raising concerns on behalf of others. As indicated above, none of the individuals who were contacted at Mr. Norn's suggestion wished to bring an allegation forward against Mr. Mercer. third party did make a statement, as reported above. On this basis, there was insufficient evidence presented to this Investigation related to the matters broadly captured by the "General Allegation" statement, and therefore it will not be considered further.

Two additional points require mention. First, it is noted here again that a separate Review was conducted related to the work environment in the OC during the 19<sup>th</sup> Legislative Assembly. Second, on the basis of third party statement, as well as the Complaints filed against Mr. Mercer, it is clearly a fact that there are some within the NTLA who feel harassed and wronged by Mr. Mercer's conduct.

#### *Specific Allegation*

This analysis will focus on the alleged behaviours on the part of Mr. Mercer which were allegedly directed at Mr. Norn. In this regard, while Mr. Norn described some disagreements and difficult interactions with Mr. Mercer, he provided limited evidence of behaviours directed at him that could, *prima facie*, represent conduct of the level of severity that should be considered in this type of an investigation. However, the events of 14 October 2020 will be considered in this regard. The factual basis of this allegation is essentially undisputed: Mr. Mercer and Mr. Norn had a

privileged caucus third party  
privileged caucus

privileged caucus

Mr. Mercer's behaviour, particularly in the context of the events that surrounded as well as preceded it, including Mr. Norn informing the third party in March 2020 of rumours about per personal and the August 2020 matter of Mr. Norn's efforts to let his name stand for nomination for Cabinet, was symptomatic of what was clearly a difficult relationship between Mr. Mercer and Mr. Norn. While demonstrating a lack of professional decorum on both sides, the proven behaviour on the part of Mr. Mercer could not be characterized as significantly aggressive or sufficiently severe to have created an intimidating

environment for Mr. Norn. Further, the evidence demonstrates that the exchange was heated on both sides, and that each apologized to the other at various points during the events surrounding this incident. Thus, it is not established that Mr. Mercer’s proven conduct represented harassment of Mr. Norn or that it was serious enough to be considered a material breach of the *Code of Conduct*.

Conclusion Relating to Mr. Norn’s Allegations

Therefore, Mr. Norn’s allegations against Mr. Mercer are considered to be not founded.

As indicated above, it is not Quintet’s general practice to comment on a parties’ credibility or to cast doubt on their motive in making a Complaint. However, in the case of Mr. Norn, the evidence and circumstances are such that legitimate questions could be raised in this regard on a *prima facie* basis. The evidence he provided was at times exaggerated and perhaps even misleading. As an illustrative example, by his own evidence, on 11 December 2020, [privileged]

[privileged]

[privileged] One also could reasonably question the wisdom of making his concerns so public and of actively recruiting complaints against Mr. Mercer. [allegation to which Mr. Norn has not had chance to respond]

[allegation to which Mr. Norn has not had chance to respond]

[allegation to which Mr. Norn has not had chance to respond] Given that Mr. Norn has not been provided an opportunity to respond to some of these matters, no further comments will be made in this Report on the subject.

**iii) Ms. Taylor’s Allegations Against Mr. Mercer**

The allegations summarized below are based on Ms. Taylor’s 11 February 2021 Complaint as well as on information gathered during Ms. Taylor’s Investigation interview. The allegations as presented below represent a high-level summary of Ms. Taylor’s case. Other aspects of her evidence that are particularly relevant are summarized further below.

Allegations

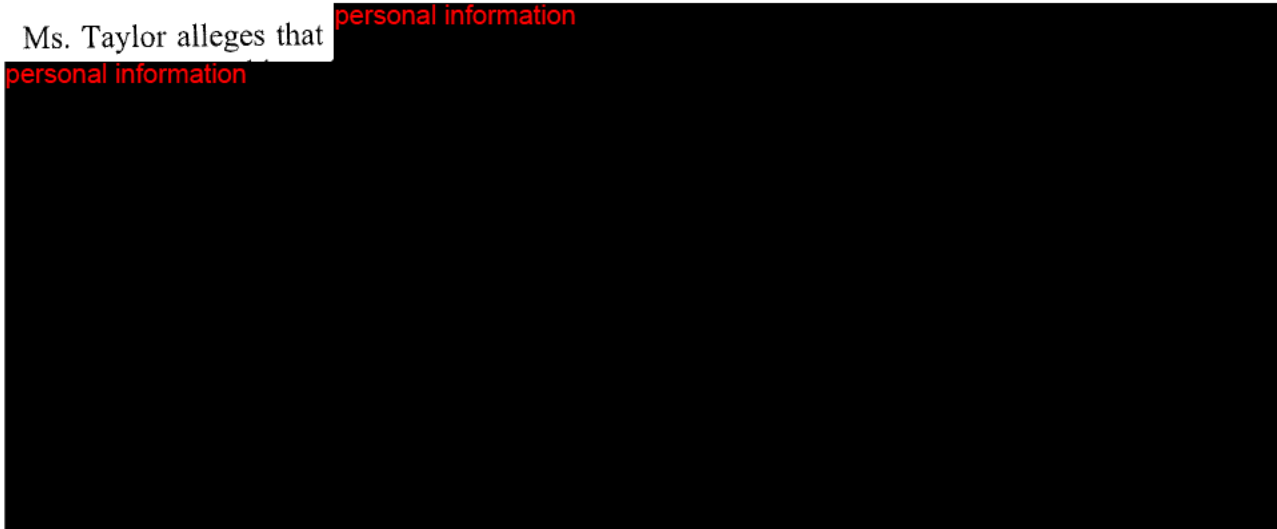
*General Allegations*

Ms. Taylor alleges that subsequent to a meeting on 8 December 2017 where Mr. Mercer berated her and [third party] her relationship with Mr. Mercer deteriorated, and there was significant “fallout” [i.e. retaliatory behaviour towards her] and he never spoke to her again.

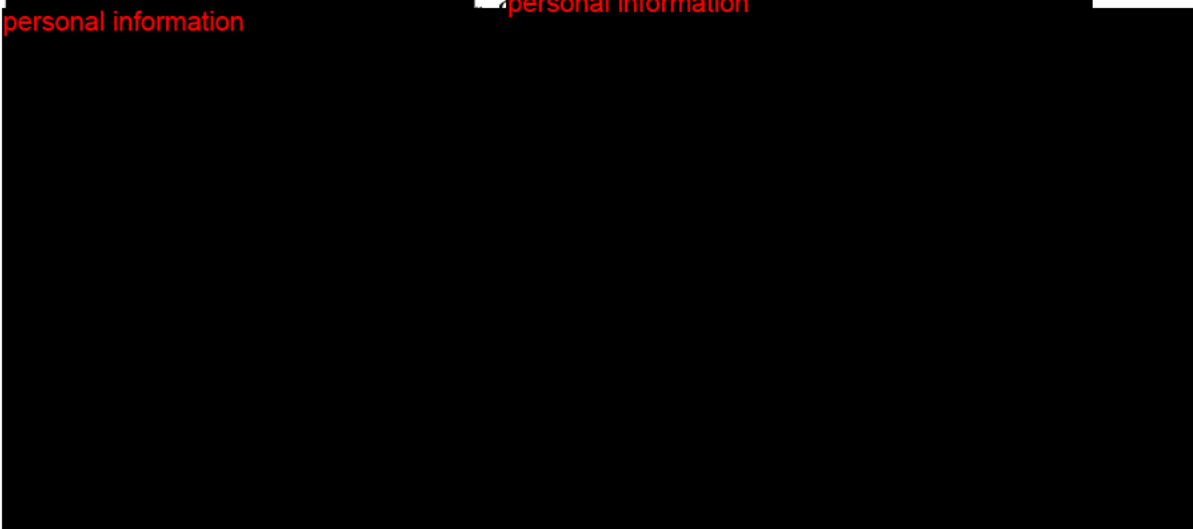
Ms. Taylor further alleges that she continues to be punished by Mr. Mercer for participating in the 2018 investigation [third party] for which she was required to provide evidence as a witness.

In addition, Ms. Taylor alleges that Mr. Mercer’s opinion of her has negatively influenced the managers he has put in place; she stated she did not have evidence of this but described Mr. Rutland and Mr. Ball providing negative feedback about her work and making her feel scrutinized.

*Specific Allegations of Fact*

1. Ms. Taylor alleges that personal information  
personal information  


2. Ms. Taylor alleges that some time personal information  
2017], personal information

- a. personal information  
personal information  


- b. personal information  
personal information  




3. Ms. Taylor alleges that she was denied opportunities for advancement as follows:

a. **personal information & third party**



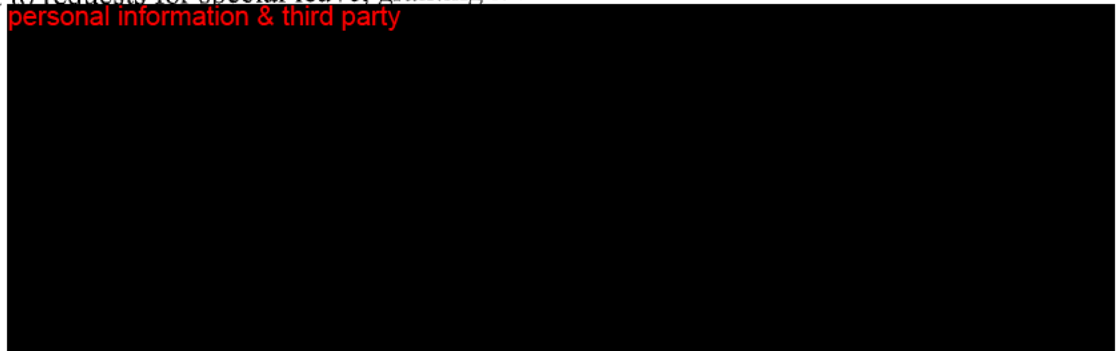
b.

c.



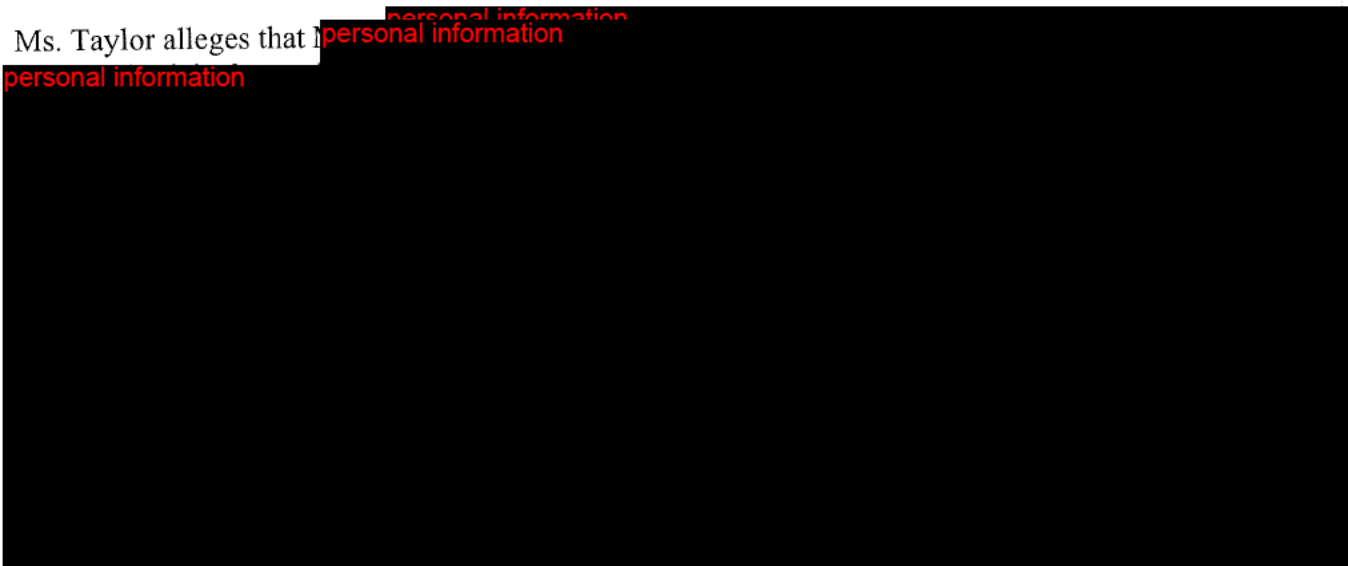
4. Ms. Taylor alleges that Mr. Mercer treated her differently than other employees with respect to requests for special leave, granting it to others but not to her.

a. **personal information & third party**



b.

5. Ms. Taylor alleges that **personal information**  
**personal information**



c. personal information

*The 2018 and 2019 Investigation Reports*

In his Responses to Ms. Taylor’s allegations, Mr. Mercer indicated that many of the matters raised in her Complaint were addressed and concluded upon in two previous investigations: a 2018 harassment investigation into the third party for which Ms. Taylor was a witness; and a 2019 investigation into allegations of retaliation on his part against third party Ms. Taylor and others, based on a complaint submitted by third party Mr. Mercer submitted that it was relevant for the Investigation Team to review these previous investigation Reports.

The Investigation Team carefully considered this request and determined that the benefits of reviewing the previous Reports outweighed the potential downsides. Most specifically, based on the aforementioned criteria for assessing allegations, this Investigation was only intended to review and consider unresolved matters. To the extent that an allegation has been previously and appropriately investigated, there are many reasons why these matters should not be re-investigated. Most important among these reasons is the lack of fairness this would represent to a Respondent, and the corresponding need for finality and closure in a workplace following the completion of an investigation.

Ultimately, Quintet requested and received the Reports from the Deputy Minister of Finance and subsequently reviewed them. Quintet did this for the sole purpose of determining which of Ms. Taylor’s allegations were inadmissible for investigation within the scope of this Investigation. For further clarity, the 2019 investigation report did address, in a considerable level of detail, some of the allegations that Ms. Taylor raised in her Complaint. It was determined that those allegations would not be addressed in the context of this Investigation.

Therefore, certain aspects of Ms. Taylor’s Complaint will not be considered further:

- Allegation 1, personal information
- Allegation 2a personal
- Allegation 5,

Those aspects of Ms.

- General alleg
- Allegation 2b
- Allegation 3,
- Allegation 4,
- and
- Allegation 5

personal  
i f u

While both the 2018 and 2019 investigation reports addressed the question of the parties' credibility, and the corresponding reliability of their evidence, Quintet was not influenced by these comments and based all of its findings and conclusions on the evidence received and reviewed for the purpose of this Investigation.

Based on the agreement that Quintet reached with the Deputy Minister of Finance, the 2018 and 2019 investigation reports have not been quoted in this Report, nor have they been appended.

Evidence Related to Ms. Taylor's Allegations

*Undisputed Matters*

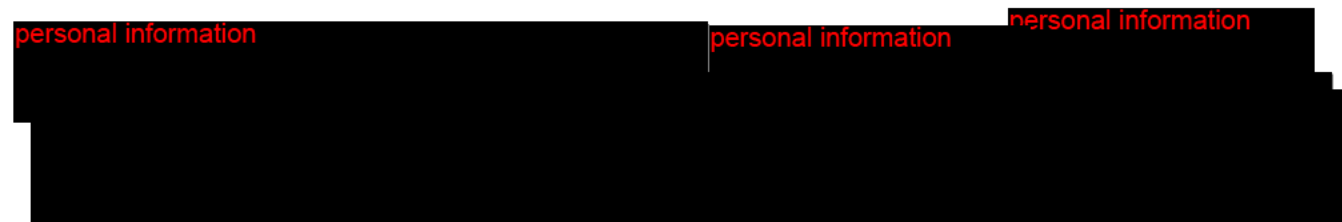
The following matters are considered established either because they were agreed, undisputed or based on high quality evidence.

personal information

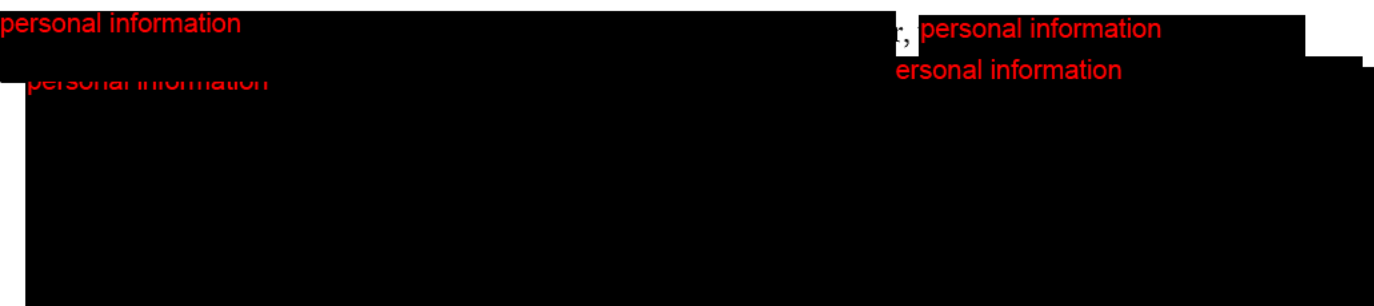


The evidence summarized below is based on Ms. Taylor's 11 February 2021 Complaint and on information gathered during Ms. Taylor's Investigation interview.

personal information personal information personal information



personal information personal information personal information



personal information



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personal information

personal information

*Mr. Mercer's Response*

In his evidence, Mr. Mercer described events leading to the 8 December 2017 meeting, personal information

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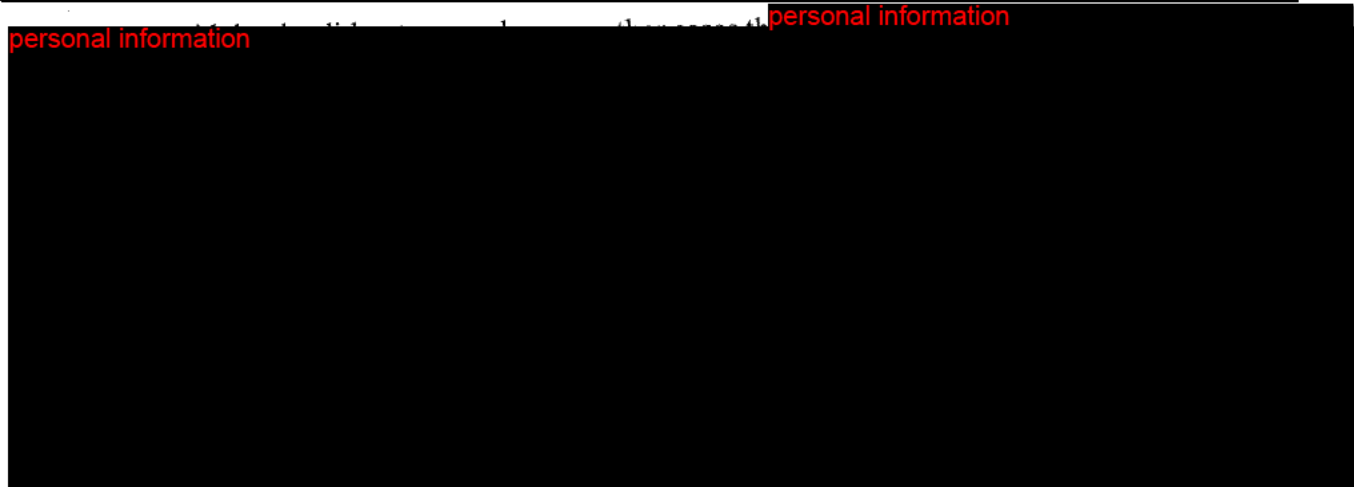


personal information



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personal information

*Witness Evidence*

personal and third party information

personal and third party information

personal and third party information

personal and third party information

personal and third party information



personal and third party information



personal and third party information



personal and third party information



personal and third party information



personal and third party information [redacted]

personal and third party information [redacted]

personal and third party information [redacted]

personal and third party information [redacted]

[redacted]

[redacted]

personal and third party information [redacted]

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personal and third party information



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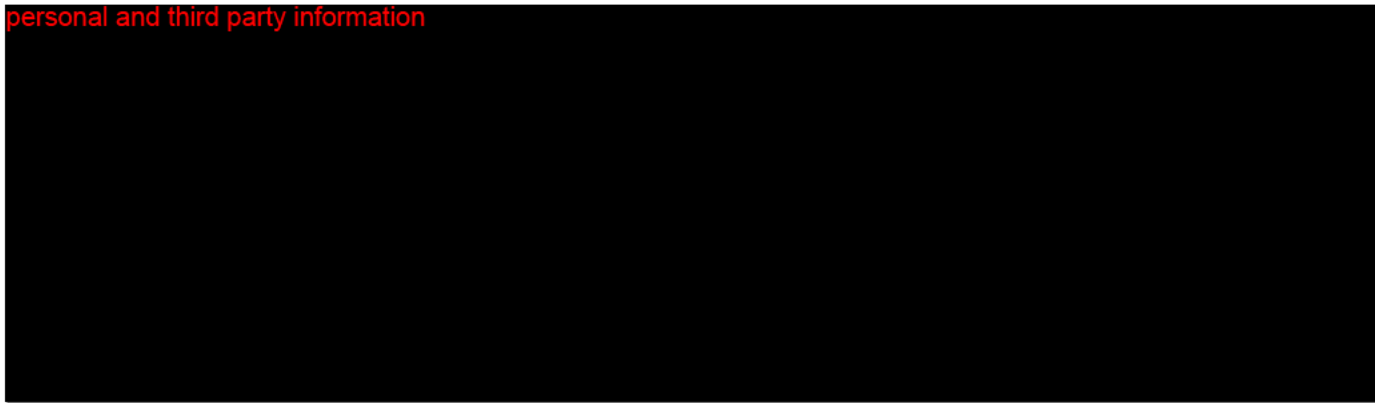


personal and third party information





personal and third party information



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Analysis and Findings Relating to Ms. Taylor's Allegations

*General Allegation: negatively influencing managers*

personal information



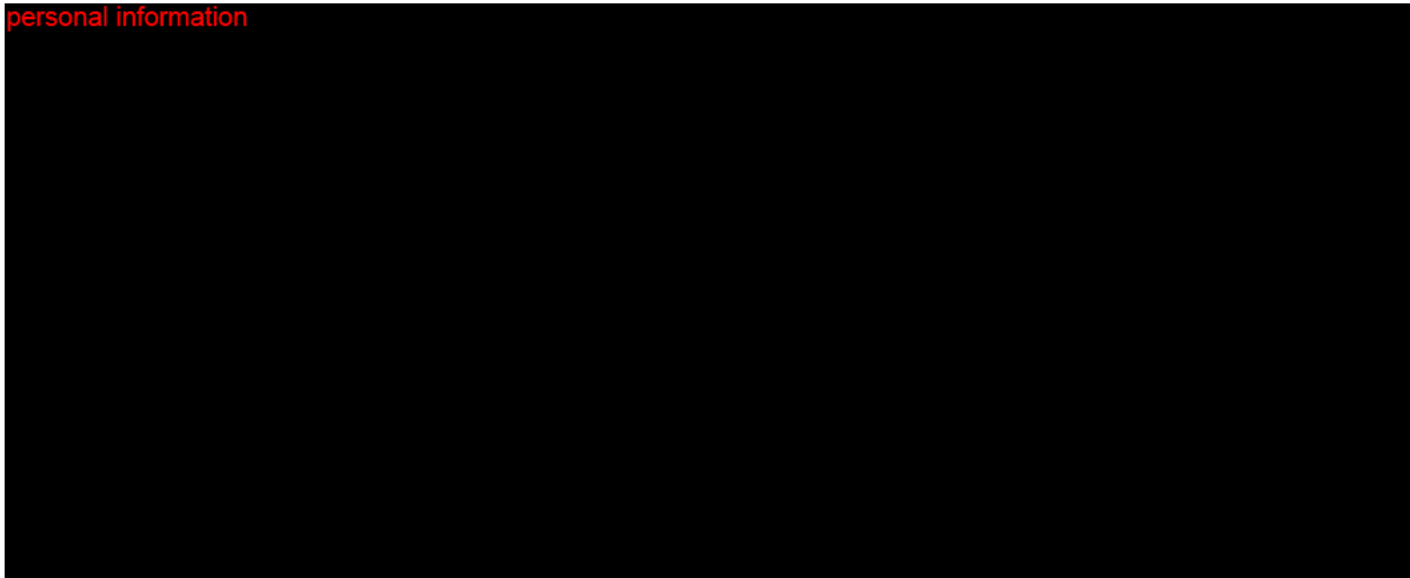
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Allegation 2b: a [personal information]

personal information

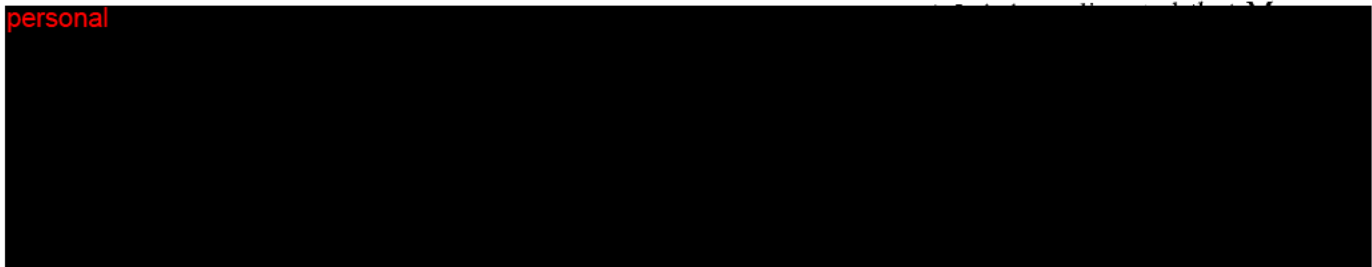


Allegation 3: denying Ms. Taylor opportunities for advancement

Ms. Taylor provided a number of examples of other individuals being provided career opportunities, while she was overlooked; her position was in essence that this was retaliatory, stemming from her involvement in [third party] complaint against Mr. Mercer. Mr. Mercer's evidence was that some of these decisions were [third party]'s and that others related to the efforts to increase the representation of Indigenous people, which was supported and authorized by the BOM. The available evidence, particularly that of [third party] supported Mr. Mercer's, and the perspective they presented was considered credible. There was no evidence presented to support Ms. Taylor's position, besides her own, that she was improperly overlooked for these opportunities. Therefore, it is not established that Mr. Mercer abused his authority in regard to decisions related to Ms. Taylor's advancement within the organization.

Allegation 4: [personal information]

personal



personal



Allegation 5: personal information



personal information



#### Conclusion Relating to Ms. Taylor's Allegations

Based on the above analysis, the central facts related to Ms. Taylor's Complaint are not established. Therefore, her admissible allegations against Mr. Mercer are considered to be not founded.

#### iv) fourth complainant Allegations Against Mr. Mercer

The allegations summarized below are based on the 18 February 2021 Complaint submitted on fourth's behalf and on information gathered during fourth Investigation interview. The allegations as presented below represent a high-level summary of fourth case, based on the evidence gathered. Other aspects of his evidence that are particularly relevant are summarized below.

#### Allegations

##### *General Allegation*

fourth complainant alleges that Mr. Mercer has breached confidentiality regarding a 2018 complaint filed against Mr. Mercer.

*Specific Allegations of Fact*

More specifically, **fourth complainant** alleges that:

1. Mr. Mercer breached confidentiality by speaking publicly about the matter and the report, including quoting from it in detail.
2. Mr. Mercer falsely communicated that he (Mr. Mercer) was exonerated and that **fourth complainant** cannot respond as **fourth complainant** is bound by confidentiality.
3. Mr. Mercer has publicly linked Ms. Taylor's Complaint with **fourth complainant**, despite the fact that Ms. Taylor was not a party to **fourth complainant** 2018 complaint.
4. Mr. Mercer has breached confidentiality by consenting to the full unredacted release of the Investigator's report.

Summary of Evidence Related to **fourth complainant** Allegations

*Undisputed Matters*

The following matters are considered established either because they were agreed, undisputed or based on high quality evidence.

In April 2018, **fourth complainant** filed a complaint of harassment against Mr. Mercer.

In September 2018, the investigation into **fourth complainant** complaint was concluded and a redacted copy of the investigation report was provided to the parties.

In the spring of 2019, **fourth complainant**

In 2019, there was an investigation into allegations raised by **fourth complainant** that Mr. Mercer had retaliated against **fourth complainant** and others subsequent to **fourth complainant** 2018 complaint and the related investigation.

On 11 February 2021, Ms. Taylor submitted a letter to the Board and media (Appendix C), in which she alleged that Mr. Mercer had harassed her.

On 12 February 2021, Mr. Mercer released a statement to the CBC, addressed to a reporter, Mr. Gleeson. In it, he commented on certain aspects of Ms. Taylor's 11 February 2021 Complaint which he said had been the subject of two previous investigations.

Mr. Mercer wrote:

The investigations concluded, amongst other things, that the evidence of Ms. Taylor and a small group of employees involved in the complaint was contrived, hyperbolic, lacking in credibility and inconsistent with the evidence of other

witnesses, including those she continues to allege were the victims of similar types of harassment, yet remain happy and productive employees of the Legislative Assembly to this day. I consent to the full, un-redacted release of these reports. All individuals who participated in these investigations, including Ms. Taylor and me, were directed not to disclose any details arising from these confidential processes. As Ms. Taylor has elected to contravene this direction, and in my own defense, I provide the following relevant and verbatim conclusions of the investigation reports:

Mr. Mercer then quoted from the associated investigation report. The quoted passages refer to the "Complainant", without mentioning **fourth complainant** by name and include the following:

'The Complainant seems to have no boundaries when communicating with **staff**. The staff cannot be expected to respect a leader that their own manager openly admits **does not respect**. Utilizing some of these normal management boundaries would likely have assisted in fostering a more positive workplace; instead, the constant gossiping and maligning of the Respondent (Mercer) and his actions nurtured the troubled environment that now exists.' (Page 67)

Mr. Mercer also wrote:

In this case, virtually all allegations of harassment against me were dismissed. Although Ms. Taylor and her supporters may not agree with the outcome of the process they initiated, it was conducted independently, fairly, objectively and by experienced professionals from outside the Territory. In responding to allegations such as this, my only option was to be open and truthful and to surrender to due process I have accepted the results of the report unconditionally, including recommendations that I improve my communication skills and be more selective in my use of humour in the workplace. I regret that Ms. Taylor has not been able to accept the findings of the investigation and continues to make allegations that have been refuted by independent investigators and make new ones that have little basis in reality.

#### **fourth complainant** Additional Evidence

It was **fourth complainant** evidence, presented on **fourth complainant** behalf in the 18 February 2021 letter from counsel, that he was explicitly instructed to maintain the confidentiality of the 2018 investigation report into **fourth complainant** complaint against Mr. Mercer as follows:

- In a letter from Deputy Minister David Stewart dated 13 September 2018, with a redacted copy of the 2018 investigation report;
- In a letter from Speaker Lafferty dated 11 October 2018; and
- As part of the Harassment Free and Respectful Workplace Policy.

However, **fourth complainant** stated that Mr. Mercer's public statement, even though it did not include **fourth complainant** name, was clearly referring to **fourth complainant** complaint and breached the required "code of



confidentiality”; this violated [redacted] fourth complainant right to confidentiality and privacy and [redacted] fourth complainant expectations of the integrity of the process.

It was [redacted] fourth complainant further position that Mr. Mercer communicated that the report exonerated him and, while this was not true, [redacted] fourth complainant could not comment further as [redacted] fourth complainant was bound by confidentiality.

[redacted] fourth complainant stated that by putting Ms. Taylor’s name into the excerpts from the investigation report in his (Mr. Mercer’s) statement to the media, Mr. Mercer further identified [redacted] fourth complainant as the 2018 complainant. [redacted] fourth complainant said that this was neither fair nor in keeping with the policy [*The GNWT Harassment Free and Respectful Workplace Policy*]. [redacted] fourth complainant said further that everyone in the OC would know it was about [redacted] fourth complainant as would others familiar with the workings of the Legislative Assembly, and numerous [redacted] fourth complainant people asked [redacted] fourth complainant if it was referring to [redacted] fourth complainant. [redacted] fourth complainant described that a [redacted] fourth complainant personal [redacted] fourth complainant

As part of [redacted] fourth complainant evidence, [redacted] fourth complainant provided links to various news articles which contained quotes attributed to Mr. Mercer, and described why these were problematic (Appendix Z). These have not been reproduced in this Report, but can be reviewed in their entirety in the Appendix to this Report.

[redacted] fourth complainant concluded that:

[redacted] fourth complainant personal information [redacted] fourth complainant

[redacted] fourth complainant stated that this breach of confidentiality had a personal impact on [redacted] fourth complainant personal information. [redacted] fourth complainant said that [redacted] fourth complainant personal information [redacted] fourth complainant

*Mr. Mercer's Response*

Mr. Mercer stated that he agrees that he breached confidentiality by speaking publicly about the matter and the report, but he explained and defended his actions, as described under "General information provided by Mr. Mercer" and in his 23 June 2021 additional Response. In the latter document, he reiterated that he knew it was wrong for him to publicly discuss the results of the 2018 investigation. He noted that in making her allegations public, Ms. Taylor breached the same obligation of confidentiality that he was under, but she misrepresented the findings of the 2018 investigation; he said her public accusations have had a permanent and devastating impact on his reputation. He stated he felt he had no choice but to protect his reputation from the "false and misleading information she chose to release to the CBC" but that he ensured that no one other than him and Ms. Taylor were identified or identifiable in his statement.

Mr. Mercer denied that he falsely communicated that he (Mr. Mercer) was exonerated; he stated that in his public statement, he communicated he had learned important lessons from the complaint against him and that all the allegations referred to by Ms. Taylor were dismissed by the investigators. He noted that two of his actions in the 2018 complaint were found to constitute harassment, and Ms. Taylor did not refer to those.

With respect to **fourth complainant** allegation that Mr. Mercer has publicly linked Ms. Taylor's Complaint with **fou** **fourth** **ant** Mr. Mercer countered that it was Ms. Taylor who linked her Complaint to **fourth complainant**. He noted that in the 2018 investigation, Ms. Taylor was described more as a complainant than as an independent witness.

With respect to his consenting to the full unredacted release of the Investigator's report, Mr. Mercer questioned how this was a breach of confidentiality, given that Ms. Taylor, in her public letter, made repeated and misleading references to the 2018 complaint and its finding and that **fourth** **fourth complainant** challenging the validity of the final investigation report, and called for its full unredacted release.

Mr. Mercer stated:

The public allegations that have been levelled against me by Ms. Taylor, Mr. Norn and Ms. Latour are devastating. They characterize me as an 'ethically rotten' senior public servant who terrorizes his staff, abuses his authority and discriminates against Indigenous elected officials and employees on the basis of their race. It is my view that the only way to dispel these accusations is with fact. The 2018 harassment investigation and subsequent retaliation complaint were investigated by competent, southern-based experts. If accusations as serious as those being made against me are to be responded to in a fullsome manner, I feel the public, my staff and the Members I serve deserve the full picture and the truth.

Analysis and Findings Relating to **fourth complainant** Allegations

Certain central facts at issue are undisputed: namely, that Mr. Mercer breached the confidentiality of the 2018 investigation with his statement to the CBC [Allegation 1], in which he referred to Ms.

Taylor's 11 February 2021 letter in the context of describing another complainant and a previous investigation [Allegation 3]. Whether "consenting" to the full, unredacted release of the reports, a fact which is undisputed, also represents a breach of confidentiality will also be considered, but as a more ancillary matter [Allegation 4]. It is ultimately beyond the scope of this Investigation to determine conclusively whether, in breaching the confidentiality of the previous investigation, Mr. Mercer falsely communicated that he had been exonerated [Allegation 2]; however, this aspect of the Complaint will be addressed to the extent possible.

Also in dispute is whether Mr. Mercer's reference to the "complainant" would reasonably be known to be **fourth** [redacted]

With respect to the latter point, **personal information** [redacted]  
**personal information** [redacted]

These factors lead to a finding that those with knowledge of that workplace could reasonably identify **fourth** [redacted] as the complainant referred to by Mr. Mercer.

Further, Mr. Mercer's statement included the phrase, "virtually all allegations of harassment against me were dismissed". While not explicitly saying the entire complaint was unfounded, such a statement would lead the reader to conclude that this was the case; however, Mr. Mercer himself stated that two of the allegations against him were founded, which is consistent with **fourth** [redacted] evidence [Allegation 2]. In addition, when Mr. Mercer quoted from that report, he included passages that describe "the complainant" in negative terms, which would reasonably be considered to have a negative impact on **fourth** [redacted] given the above findings.

Thus, it is established that with his public statement, including, but not specifically because of, his reference to his "consent" to the "full and unredacted release", Mr. Mercer breached confidentiality by referring to **fourth** [redacted] 2018 complaint and quoting from the investigation report in a public forum; further, it is established that **fourth** [redacted] could reasonably be identified as the "complainant" referred to in that public statement by those who were familiar with the workplace and that the information quoted presented **fourth** [redacted] in a negative light.

Mr. Mercer's explanation for his actions, taken in the context of the events of February 2021 as a whole, is compelling. There were clearly extenuating circumstances leading to this decision, one that he indicated he has since regretted. However, one of Mr. Mercer's concerns related to Ms.

Taylor's Complaint was that she was bringing up matters that had previously been investigated and resolved; ironically, in his attempts to address this, he involved fourth in a matter that did not concern him (Ms. Taylor's Complaint), long after the issues fourth had brought forward through the proper channels had been concluded upon and fourth. Further, in doing so, Mr. Mercer did not accurately represent the results of that investigation in a public forum and shared information that would be considered seriously harmful to fourth complainant.

Mr. Mercer's proven conduct, despite the difficult and mitigating circumstances that surrounded these events, were inconsistent with the expectations of someone in his position, and the expectation in the applicable *Code of Conduct* that public servants adhere to "high ethical standards that maintain and foster public confidence". They also represent a breach of confidentiality, as defined in the *Harassment Free and Respectful Workplace Policy*. The Policy clearly stipulates that, "All persons share in the responsibility to maintain confidentiality necessary to the process" and that, "All matters and materials relating to a workplace harassment complaint are to be treated with the utmost confidentiality by all participants involved and are subject to a strict need-to-know basis. Any employee who fails to comply may be subject to disciplinary measures". In making public comments about the 2018 investigation, Mr. Mercer's conduct was inconsistent with both the letter and spirit of this component of the Policy.

Finally, it should be noted that if fourth complainant were still an employee of the OC, Mr. Mercer's public comments would have also represented personal harassment as per the definition in the Policy, as we conclude that, given the severity of the breach and impact on fourth complainant they could reasonably be "considered to have the purpose or effect of violating an individual's dignity and can reasonably be considered to result in creating an intimidating, hostile, degrading, humiliating or offensive environment".

However, particularly in the case of the conclusion on personal harassment, it should be noted that the Policy does not apply to the situation. The Policy clearly stipulates that, "This policy does not apply to complaints from clients of the public". When this breach of confidentiality occurred fourth complainant was no longer an employee of the OC. As such, it is not concluded that this Policy is applicable in this incident.

## VIII. CONCLUSION AND CLOSING COMMENTS

In conclusion:

- Ms. Latour, Mr. Norn and Ms. Taylor's Allegations are considered not founded; and
- fourth complainant Allegations are considered founded.

This was a complex investigation and process, which clearly had an impact on the people and the organization. In addition to occurring in the midst of an unprecedented global pandemic, the events under investigation occurred within a unique consensus government, in the aftermath of previously concluded harassment investigations, and very much in the public domain. We believe that these factors all led to the exceptional nature of the situation.

While this Report contains findings and conclusions, these do not fully capture the extent of conflict and the difficult work ahead to restore the workplace and workplaces. It became clear, as we listened to the parties and witnesses, that this difficult and complex situation has had a significant impact on many, both personally and professionally. As we conclude this process, we wish to thank those who participated and feel it is important to emphasize that our Team did hear these concerns and their corresponding impacts. We offer our sincere hope that this process can assist in the restoration of the workplace and the parties' strained relations.