

**SUMMARY REPORT – WORKPLACE REVIEW**

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

Submitted by:

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# SUMMARY REPORT – WORKPLACE REVIEW

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

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## **SUMMARY REPORT – WORKPLACE REVIEW**

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

#### **A. 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 a fourth person (“the 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 an Investigation relating to the specific allegations of harassment and/or inappropriate conduct made against the Clerk by the Complainants, addressed in an Investigation Report; and a Review of the concerns that were raised within the OC, which was addressed in a separate, 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).

In addition to the separate Investigation and Review Reports, Quintet was asked to produce this Summary Report related to the Workplace Review. This is a non-exhaustive summary of the two separate Reports that were delivered to the BOM.

#### **B. SUMMARY OF REVIEW REPORT**

##### **I. MANDATE**

Quintet approached the task of carrying out the role assigned to it in the Terms of Reference (TOR)<sup>2</sup> in a deliberate fashion, ensuring that the process was fair for all those who participated, including for the Legislative Assembly as an organization, its management including the Clerk, employees and former employees (who have left during the 19<sup>th</sup> Legislative Assembly).

The TOR formed the basis of Quintet’s mandate and was applied throughout the Review. Quintet was mandated to solicit the interest of current and former employees of the OC (since the beginning of the 19<sup>th</sup> Legislative Assembly) to participate in the Review on a voluntary basis in order to

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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 Review was first published on 2 March 2021 with an update published on 30 April 2021. In this Report, the TOR refers to the updated version dated 30 April 2021.

provide them with a confidential forum to identify their workplace concerns. Pursuant to the TOR, Quintet was also able to identify and invite “knowledgeable individuals” to participate in the Review. “[K]nowledgeable individuals” are described in the TOR as including “individuals with direct knowledge of the work environment within the Office of the Clerk or those having relevant information or documents relating to the work environment during the 19th Legislative Assembly”. These individuals were also able to participate confidentially.

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 Review, as well as all of the required communication materials and information documents to be used throughout the Review.
- Contact potential participants and solicit their voluntary interest in participating in the Review.
- Provide detailed information, including an explanation of the process and an Information document, to individuals who indicated they wanted to participate in the Review.
- Prepare an interview guide, in a manner consistent with the purpose of the Review.
- Take detailed notes during the interviews.
- Remind the participants of the confidentiality of the process.
- Provide updates weekly or as needed to the client representative relating to the progress of the Review.
- Produce a Review Report, which:
  - summarizes the information gathered without revealing the identity of any one participant.
  - determines whether or not the evidence establishes that the workplace is poisoned/toxic.
  - summarizes any other topics or themes that emerge from interviews with participants, both positive and negative.
  - makes recommendations for next steps and future actions.
- Conduct the Review with the utmost discretion, in a manner consistent with the applicable legislation, policies and codes, and the principles of procedural fairness.

## II. PROCESS AND CHRONOLOGY OF THE REVIEW

### A. Launch of the Review

On 10 March 2021, Quintet began work on the Review. The Review Team consisted of experienced consultants in the area of the prevention and management of conflict in the workplace.

Quintet began by reviewing the relevant documents.

Quintet then developed a detailed plan for the Review, all of the required communication materials, including the *Information about the Northwest Territories Legislative Assembly Review of the Office of the Clerk* document, as well as communication and interview protocols. These materials were prepared by the Review Team, for the Review and were followed scrupulously by the Review Team in communicating with and interviewing participants.

## **B. Scope of Participation in the Review**

On 11 March 2021, Quintet was provided with a list of names and contact information of 36 current and former employees who fell within the scope of the Review. Two more names were subsequently added to the list, for a total of 38 current and former employees. Among those invited to participate were members of senior management. In addition to the 38 potential participants, Quintet invited three knowledgeable individuals.

On 16 March 2021, the Review Team sent individual introductory emails to the potential participants, to introduce Quintet, outline the principal purpose of the Review, invite them to participate in the Review on a voluntary basis and provide them with a description of the process, consistent with the TOR.

The Review Team made all reasonable efforts to contact potential participants directly, as required by the TOR, to solicit their interest in participating in the Review on a voluntary basis.

The potential participants were asked to express their interest in participating in the Review by responding to the email on or before 26 March 2021 and were given the opportunity to send their written questions about the document to a dedicated and confidential email address before their interview. Attached to the email was the *Information about the Northwest Territories Legislative Assembly Review of the Office of the Clerk* document. Participants were also provided the opportunity to receive the documentation in any other Official Language of the Northwest Territories.

In total, 30 current and former employees expressed an interest in and were interviewed for the Review. Further, three knowledgeable individuals participated in the Review.

Some participants in the Review were also interviewed in the context of the aforementioned Investigation. With the individual's consent and to the extent possible, these individuals were only interviewed once.

## **C. Interviews**

On 30 April 2021, Quintet began to schedule interviews with participants, with interviews beginning on 6 May 2021. Prior to conducting interviews, the Review Team responded to any specific questions that any potential participant posed.

After participants had confirmed their interest in taking part in the Review, a member of the Review 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 Review 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 about the*

*Northwest Territories Legislative Assembly Review of the Office of the Clerk* document and had been provided an opportunity to ask questions concerning their participation in this matter.

From 6 May 2021 to 16 July 2021, the Review Team conducted a total of 33 interviews with participants. Due to the COVID-19 pandemic, all interviews were conducted virtually, primarily using Microsoft Teams with a number also conducted by telephone.

The same interview format was followed with every participant:

- The member of the Review Team thanked the participant for participating in the important Review concerning the work environment within the OC and briefly introduced Quintet.
- The participant again explicitly confirmed that they had received, reviewed and understood the contents of the *Information about the Northwest Territories Legislative Assembly Review of the Office of the Clerk* document sent to them by email by Quintet and that they had been provided an opportunity to ask questions concerning their participation in the Review prior to their interview. The participants also confirmed that they understood the Review process, and were participating voluntarily in the Review.
- The member of the Review Team told participants that Quintet was not recording the meeting and presumed that they (the participants) were not doing so either, given the sensitive nature of the Review process. None of the participants indicated that they were recording the meeting.

After the introductory matters were covered, the member of the Review Team asked each participant the following:

- To briefly describe their history with the OC, to the extent that it was relevant to the matters they wanted to raise to the Review. This could include relevant contextual information, their role at the OC or the basis upon which they had information to provide to the Review.
- Describe the interactions between staff and the interactions between management and staff.
- If they have ever experienced or witnessed any behaviour or conduct that they would describe as inappropriate or disrespectful at work.
- What aspects of the work environment they found positive.
- What they would feel would most improve the work environment.
- What their hopes were for the Review process.
- If there was anything else that they wished to add.

The member of the Review Team conducting interviews did not attempt to elicit information and asked few follow-up and clarifying questions only when the participant did not provide sufficient details for Quintet to understand the issue they had raised.

In the days following each interview, a member of the Review Team read each participant detailed notes, which summarized the matters they had discussed during their interview, to provide them the opportunity to confirm the accuracy of the notes and to suggest corrections. The member of the Review Team also thanked participants for their contribution to the Review.

#### **D. Participants' Identity and Confidentiality**

Consistent with the TOR, in preparing the Report, Quintet took all reasonable efforts to maintain the confidentiality of the process. To achieve this end, the information contained in the Review Report was abstracted in such a manner that it would not conclusively identify the source of the information.

### **III. METHODOLOGY**

#### **A. Procedural Fairness and Nature of the Review**

The requirements of procedural fairness depend on context, including the seriousness of the situation for those affected. Procedural fairness includes the principle that a decision-maker, before making a decision that adversely affects an individual, must hear that individual's side of the story.

The Review was not an investigation. Therefore, the mandate did not include investigating any specific allegations or determining whether any alleged conduct or behaviour relating to the concerns is proven to have occurred. As such, the Review was to be conducted at a *prima facie* level.

The non-definitive nature of the *prima facie* conclusions foreseen in the Review conditioned the duty of procedural fairness applicable to the process. Quintet did not investigate the veracity of the concerns raised by participants. For example, Quintet did not test the quality of the evidence gathered or assess participants' credibility. It follows, importantly, that the description of alleged conduct in the Review Report does not establish that such conduct occurred. Findings of fact, and conclusions of misconduct arising from them, as the case might be, could only follow from a subsequent process, one having full regard for the procedural fairness rights of all involved parties.

#### **B. Key Terminology**

The definition of a poisoned or toxic work environment was relevant to the mandate of the Review.

Based on the information available to Quintet, the Government of the Northwest Territories (GNWT) does not have a standard definition of a toxic or poisoned workplace. However, the Treasury Board Secretariat of the Government of Canada defines a poisoned work environment, as follows, in the document, *Is it Harassment? A Tool to Guide Employees (Guide)*:

A poisoned work environment refers to a workplace in which comments or behaviours create a hostile or offensive environment for individuals or groups and negatively affects communication and productivity. These activities (e.g., yelling at no one in particular; pounding a desk in frustration) are not necessarily directed at anyone in particular.

All employees are expected to act towards other individuals professionally and respectfully and to speak out against unacceptable behaviours in the workplace in a skillful and sensitive manner. As the improper conduct is not directed at anyone in particular, as per the definition of harassment, a witness may not file a harassment complaint. Witnessing offensive behaviour towards others in the workplace does not constitute harassment for that witness. However, the situation should be reported to the supervisor or to the manager at the next level and prompt action is expected to be taken. All managers are expected to intervene promptly when they become aware of improper or offensive conduct even when no complaint has been made.

However, please note that a behaviour not directed at any one identifiable person becomes harassment only when it relates to a prohibited ground of discrimination (such as displaying sexually explicit material or telling racist or religious jokes).

In Quintet's view, there is no meaningful difference between a "poisoned" and "toxic" work environment; therefore, the description in the *Guide* was used as a reference point for the concept of both a toxic or poisoned workplace, for the purpose of the Review.

As explained in the *Guide*, examples of behaviours leading to a poisoned or toxic work environment could include, but are not limited to, yelling, pounding a desk in frustration, and other comments and behaviour that would create a hostile or offensive work environment for individuals or groups and negatively affect communication or productivity in the workplace.

## IV. CONCLUSIONS

### A. Introduction

Following the interviews, approximately 100 pages of interview notes were prepared by the Review Team and validated by individual participants, in the manner described above. The members of the Review Team conducting interviews did not attempt to elicit information with respect to the themes presented below; rather, these emerged from the interviews, which, as described previously in this Report, were guided by a limited number of open-ended questions.

Broadly speaking, the term positive views about the work environment refers to an understanding of the work environment as productive and respectful. Specifically, this term is used when participants described workplace characteristics such as the following:

- Staff treat each other respectfully and in a friendly manner;
- Managers are communicative, supportive, and open to staff feedback;
- There are opportunities for professional development and career growth;



- Conditions for retention and promotion are clearly and effectively communicated to staff by management;
- Work environment is supportive of a work-life balance; and
- Work environment is inclusive and empowering for all employees.

Negative views of the work environment, by contrast, refer to an understanding of the work environment as counterproductive or disrespectful. Specifically, this term is used when participants described workplace characteristics such as the following:

- Staff do not treat each other respectfully;
- Managers do not treat staff with respect (including communication between managers and staff);
- Opportunities for professional development and career growth are arbitrarily limited;
- There are extended periods of high-stress work; and
- Inappropriate or aggressive conduct is observed or experienced.

Just as the presence of positive views of the work environment does not imply a lack of areas for improvement, the presence of negative views of the work environment does not in and of itself indicate a poisoned or toxic work environment.

## **B. Summary of Themes and Conclusions**

There were many positive aspects of the work environment within the OC that emerged within the themes identified through this Review. These represent the described reality for many, albeit not all, participants; they should not be understated or overlooked, and are considered strengths upon which to build in moving the organization forward.

These included, but were not limited to:

- Pride in the work of the OC and the NTLA on the part of employees;
- Dedicated and professional employees;
- Strong sense of belonging and connection amongst many of the staff, both personal and professional;
- Employees feeling supported with respect to their career development;
- Appreciation for the leadership within the organization, including the Clerk; and
- Satisfaction with the level of inclusiveness, particularly with respect to opportunities for Indigenous individuals.

However, some employees described having an overall negative experience within the OC, and this sentiment was expressed related to various themes. The connection amongst members of this group was not immediately evident. Some employees have been working at the OC for several years while others have joined more recently. They do not necessarily share similar duties or work in the same unit. One pattern that seemed apparent was that employees who participated actively in social activities and had frequent personal and professional interactions with senior management generally reported having a better overall employee experience.

Even though this Review was not an investigation nor was it focused on the conduct of the Clerk himself, the Review Team was mindful of the circumstances that led to the initiation of this process by the BOM. Further, as part of the information gathered in the Review interviews, the Clerk's conduct and influence on the work environment, both positive and negative, emerged as a theme. Similarly, while many, a large majority even, of participants described the Clerk in positive terms, some raised what must be considered serious concerns about his conduct. It must be noted that in some cases, these concerns were the subject of a concurrent Investigation; no conclusions on these matters were presented in the Review Report, however, the fact that there are diametrically opposed views of the Clerk as a leader should be a matter for serious consideration.

As described, these disparate views and experiences are symptomatic of a divided workplace and a lack of unity.

In addition to this, which is considered the most significant conclusion related to the workplace concerns, participants reported:

- Unresolved conflicts and unmanaged labour relations issues
  - These continue to negatively affect the work environment, even for those not directly involved.
- Concerns related to communication across the organization
- Difficult interactions with MLAs
  - These are not seen to be resolved or resolvable in part due to perceived proximity of OC senior management and MLAs.
- Clerks being viewed as favoured, leading to feelings of inequity for other staff
- Conflict of interest and preferential treatment related to staffing
  - This creates a perception that negatively affects the credibility of leadership, as well as the reputation of those being appointed through these non-competitive processes, and leads to resentment. It is worth noting that many of these appointments were made to benefit Indigenous candidates.

Thus, while the reported concerns varied with respect to the severity of their impact, overall, they pointed to a divided work environment, one where leadership was not viewed uniformly positively or as effective, and had not been able to bring about unity.

Such variability in the employees' experience, in addition to the reported conflicts and labour-relations issues that have not been resolved, would likely have a negative impact on employees, including those who otherwise reported satisfaction with the work environment. Therefore, we concluded that these matters, reviewed at a *prima facie* level, pointed to a workplace in which important problems exist, which require the attention of the convening authority. If left unaddressed, these problems are likely to continue to negatively affect the health of the workplace for an increasingly large number of employees.

Based on a totality of the information reviewed and considered for the purpose of the Review, we did not conclude that the workplace is, in an overall or broad sense, a toxic or poisoned one. However, based on the disparate views and experiences of some staff, these individuals likely perceive it to be a poisoned or toxic workplace.

## V. RECOMMENDATIONS FOR NEXT STEPS AND FUTURE ACTIONS

As part of its mandate, Quintet was tasked with identifying recommendations for next steps and future actions.

Presented below are proposed next steps and future actions designed to conclude the Review process and orient employees and management towards making improvements aimed at supporting their own and the organization's future success.

### **Next Steps to Conclude the Review and Orient towards Future Success**

1. Engage the most senior leadership of the convening authority in the necessary action.
2. Thank employees for their participation.
3. Communicate with current employees, to the extent possible, about the outcome of the Review.
4. Commit to taking action.
5. Reassure employees of the sincerity of this commitment and offer protections if required.
6. Take action.
7. Continue oversight.

#### *Step 1: Engaging the Most Senior Leadership*

Central to the success of any restoration of the workplace, is the requirement that the most senior leadership of the Review's convening authority be involved in all these steps, to the extent possible, and be seen to be involved, particularly by OC employees, given the reported breakdown of trust between some current employees and the OC's senior leadership.

#### *Step 2, 3, 4 and 5: Thanking, Communicating, Committing, Reassuring*

Given the results of the Review, senior leadership of the Review's convening authority should communicate formally to participants (including former employees if deemed appropriate), expressing sincere appreciation for their participation in the Review. It is also recommended that the communication express a commitment to address the reported concerns in a meaningful way and to continue to communicate further to employees regarding next steps (to the extent possible, given issues of confidentiality).

#### *Step 6: Take action*

Consider the results of the Review, with an eye to appropriately and effectively addressing the reported concerns.

#### *Step 7: Continue oversight*

Follow up at pre-determined intervals to assess the progress made in implementing recommendations and to ensure that the workplace environment shows signs of improvement. It is recommended that current employees be engaged in this process and that their input be sought and considered.

## C. SUMMARY OF INVESTIGATION REPORT

### I. MANDATE

Quintet approached the task of carrying out the role assigned to it in the TOR 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.

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.

### II. BACKGROUND

#### 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). She provides support and research advice to the Standing Committee on Government Operations, and also provides research support to individual Members of the Legislative Assembly. Ms. Taylor previously worked for the Government of the Northwest Territories (GNWT) for approximately 20 years, 12 of which were in a management position.

**The Fourth Complainant** formerly worked at the Legislative Assembly.

### 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.

## III. 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.

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

On 12 February 2021, Ms. Latour made a complaint to all 19 MLAs, 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, 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.

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.

On 18 February 2021 and 2 March 2021, the BOM received correspondence from counsel for the Fourth Complainant alleging that Mr. Mercer had violated their rights to confidentiality and privacy related to previous investigations.

## **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 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. The 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 counsel for Ms. Latour.

These included:

- On 22 March, 6 April and 16 April 2021 from counsel for Ms. Latour.
- On 22 March, 8 April and 15 April 2021 from counsel for Mr. Norn.

In sum, the letters 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

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 officers, 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 was 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 was 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 was 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, the Fourth Complainant, 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. 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*, 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

Ms. Taylor was interviewed on 29 and 31 March 2021.

Mr. Norn was interviewed on 14 May 2021.

Ms. Latour was interviewed on 12 May and 16 June 2021.

The Fourth Complainant was interviewed on 4 June 2021.

### 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> six individuals:

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:

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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.

- 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.

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" (the Disclosure), as well as the relevant Complaint documents, and, where relevant, additional written submissions from Ms. Latour, Mr. Norn, Ms. Taylor, and The Fourth Complainant. 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 the Investigation Report.

#### The Respondent

On 5 May 2021, Mr. Mercer submitted a document entitled "Written Statement of Tim Mercer", which was 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 was considered to be his additional Response.

Mr. Mercer also participated in an Investigation interview on 25 June 2021, at which time he provided additional information about the matters under investigation.

### 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.

Eight individuals participated in the Investigation as witnesses, while the remaining six either declined to participate, declined to respond to questions that they were provided, or did not respond to attempts to contact them.

## **IV. RELEVANT POLICIES AND CODES**

The following policies and codes were 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 operated 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.

## V. 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 were 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.

The Report also commented on the quality of the parties' evidence and their credibility as witnesses

## VI. SUMMARY OF FINDINGS

A large quantity of evidence of varying degrees of quality and relevance was presented by the principal parties and witnesses. All evidence was carefully considered, and its presentation in the Investigation Report was guided by the principles and purposes of the Investigation. The Investigation Report did not conclude on all the matters, themes and arguments raised in the evidence. Instead, findings of fact were limited to those directly relevant to determining whether or not the core admissible allegations were founded in whole or in part.

A number of allegations were deemed admissible based on the criteria that were established and applied, as described previously.

With respect to Ms. Latour, Mr. Norn and Ms. Taylor's Complaints, in a general sense, the admissible allegations from their Complaints touched on the following matters:

- Ms. Latour alleged that Mr. Mercer abused the power of his position to control and influence the BOM and ultimately the Legislative Assembly and to negatively affect the operations of the OCEO; she also alleged that Mr. Mercer wanted to remove her as CEO because she is Indigenous.
- Mr. Norn alleged that Mr. Mercer "lashed out" when he and other MLAs attempted to push back on his undue influence.

- Ms. Taylor alleged that Mr. Mercer denied her various opportunities and requests and negatively influenced her managers.

After a thorough assessment of all the evidence gathered in the course of the Investigation was conducted, and the positions of the three Complainants and the Respondent were considered, it was determined that the Complaints of Ms. Latour, Mr. Norn and Ms. Taylor were not founded. In relation to Ms. Latour's allegation that Mr. Mercer wanted to remove her as CEO because she is Indigenous, 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. Further, in the context of the evidence received for the purpose of the Workplace Review, 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.

With respect to the Fourth Complainant, they raised allegations of a breach of confidentiality on the part of Mr. Mercer, related to previous investigations. After careful consideration of all the evidence gathered, much of which was undisputed, it was determined that the Complaint of the Fourth Complainant was founded. Mr. Mercer's conduct was found to be inconsistent with the applicable *Code of Conduct* and with the letter and spirit of the confidentiality requirements of the *Harassment Free and Respectful Workplace Policy*. However, it was noted that there were extenuating circumstances to be taken into consideration with respect to the Respondent's proven conduct and also noted that the *Harassment Free and Respectful Workplace Policy* did not apply to the Fourth Complainant.

## VII. CONCLUSION AND CLOSING COMMENTS

In conclusion:

- Ms. Latour, Mr. Norn and Ms. Taylor's Allegations were considered not founded; and
- The Fourth Complainant's Allegations were 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 system, 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.