

**REPORT AND LEGAL OPINION RESULTING FROM
INDEPENDENT INVESTIGATION**

March 28, 2018

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This is the Report and Legal Opinion based on Independent Investigation conducted pursuant to the Terms of Reference adopted by Wei Wai Kum Band Council on November 8, 2017, into the Spooner Allegations (allegations of wrongdoing by Councillor Jason Price), and the Formal Complaint (allegations that previous investigations have been inadequate and allegations that disinformation has been provided to Wei Wai Kum Band members).

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PART I - INTRODUCTION

In March 2016 Chief and Council of the Wei Wai Kum First Nation (“WWK”) received an email from Linda Spooner, one of the principals of K&L Spooner Construction Ltd. (“K&L Ltd.”), alleging that Councillor Jason Price had been receiving payment for obtaining construction jobs for K&L Ltd. on WWK reserve land.

In an investigation by the WWK Administration these allegations were denied by Jason Price and Kevin Spooner, the other principal of K&L Ltd. Subsequent investigations supported those denials. However, many WWK members questioned the denials and the adequacy of the investigations.

Over time, the WWK membership has become sharply divided. Many members have supported Jason Price and rejected the allegations of wrongdoing. However, many others have remained convinced, or at least suspicious, that Jason Price had been involved in wrongdoing. This latter group also criticized the handling of the matter by WWK Chief and Council and the Band Manager.

In the face of this continuing controversy WWK retained John R. Rich¹ of Ratcliff & Company LLP to undertake a fully independent investigation into the allegations of wrongdoing, as well as the handling of the matter by the Band Administration and the Chief and Council.

The investigation was initiated in November 2017, after the WWK Band Council adopted the Terms of Reference (“TOR”) by Band Council Resolution dated November 8, 2017. The TOR is attached as **Appendix A** to this Report.

The investigation has spanned several months and has considered a breadth of evidence – more than 17 interviews were conducted, over 1,000 documents reviewed and dozens of follow-up questions and requests were made of various parties. The investigation faced significant delays in January, February and March 2018 as a result of discussions with Mr. Price's legal counsel regarding Mr. Price's willingness to be interviewed and respond to the allegations of wrongdoing as part of this investigation. The request for an interview was eventually denied by Mr. Price's lawyer in his letter of March 14, 2018.

This investigation is now complete. The results are set out below, with the hope that this Report will provide the basis for resolution of the various issues.

¹ The investigator, John R. Rich is a lawyer with Ratcliff & Company LLP. He has over 30 years of experience in the practice of law, specializing in First Nations issues. He has had no previous involvement with WWK, or WWK members. He was assisted in the preparation of this report by Emma K. Hume, an associate at Ratcliff & Company LLP.

PART II - TERMS OF REFERENCE

TOR for this independent investigation is attached as **Appendix A** to this report. The TOR was approved by WWK Band Council Resolution on November 8, 2017.

The TOR identify the issues for investigation, which include:

- Allegations initiated by Linda Spooner of K&L Ltd. respecting alleged misconduct by Councillor Jason Price (the “Allegations of Wrongdoing”).
- Allegations in a formal complaint by Frances Roberts including that:
 - The investigation(s) of the Allegations of Wrongdoing by WWK Chief, Council, and administration were inadequate; and
 - The WWK Chief, Council, and administration failed to inform and/or misled membership respecting the investigation of the Allegations of Wrongdoing (collectively, the “Formal Complaint”).
- TOR paragraph 9 (j) provides that the investigation is in respect of Jason Price’s role as a Councillor only (not as an employee).

A. THE ALLEGATIONS OF WRONGDOING

In March, 2016 Linda Spooner made allegations to WWK Chief and Council that Jason Price was paid by K&L Ltd. in return for him obtaining work for the company on Band construction projects. She continues to maintain the Allegations of Wrongdoing.

Spooner alleges that the funds used by K&L Ltd. to pay Jason Price were obtained by overcharging or short-changing construction contracts with the WWK Band or WWK members.

Spooner also alleges that Jason Price obtained labour and materials for construction on his own house, which were charged by K&L Ltd. to other “Band” projects.

In total, Ms. Spooner has made over 20 specific allegations of wrongdoing by Jason Price.

B. ADEQUACY OF INVESTIGATION

The formal complaint of Frances Roberts alleges that the WWK Council has not taken adequate measures to address the Jason Price matter.

At various times, Chief Pollard, some Councillors, and the Band Manager, have pointed to investigations which they assert have fully dealt with the Allegations of Wrongdoing.

The persons asserting the adequacy of investigations have identified a total of seven purported investigations.

C. FAILURE TO INFORM, MISINFORMATION

Frances Roberts's Formal Complaint alleges that community members have been misled, repeatedly ignored and threatened with legal action by the Chief and Band Manager.

The Formal Complaint asserts that information provided to the membership through newsletters to membership, public statements and at general meetings, by the Chief, some Councillors, and the Band Manager respecting the Jason Price matter, at various times between March 2016 and November 2017, has been insufficient and misleading.

PART III - SUMMARY OF CONCLUSIONS

This part of the report summarizes conclusions on the various matters subject to the TOR. A detailed analysis underlying these conclusions may be found in the various sections of this report below.

This investigation has involved a thorough analysis of both the Allegations of Wrongdoing and the Formal Complaint.

The investigation has found that some of the allegations are with merit and that others are unsubstantiated.

Jason Price, having acted in an undisclosed conflict of interest and receiving a secret benefit from K&L Ltd. while holding the Housing Portfolio on Council, has breached his fiduciary duties to the WWK Band and its members. However, he has not acted alone. Mr. Price's conflict of interest and undisclosed profits would have never been possible without the cooperation and involvement of K&L Ltd.

Chief Pollard and, at his direction, the Band Manager failed to treat the allegations against Mr. Price seriously. Rather than take steps to ensure the allegations were investigated independently, and that WWK Council was fully informed of the same, WWK's internal investigation ignored important evidence and attempted to sweep the allegations aside. External reviews of the Allegations of Wrongdoing were either non-existent (in the case of the Canada Mortgage and Housing Corporation ("CMHC") audit) or undermined or guided by the Chief's own motivations. None of the investigations were thorough or independent. As a result, significant resources were wasted investigating the allegations, and then defending the adequacy of the investigations.

When Chief Pollard and the Band Manager were questioned about Mr. Price's conduct or the adequacy of investigations into the same by WWK Council and WWK membership, the Chief and Band Manager ignored the complaints, reprimanded those asking questions, or attempted to suppress the questions with misinformation about the adequacy and independence of the investigations.

The WWK members who have continued to press this issue have done so with limited information, and based on rumor or speculation. As a result, a number of their complaints were unfounded.

Together, all the parties have contributed to a toxic environment within the WWK community, made worse by the continued attempts by the WWK Administration to misinform the WWK membership as recently as November 2017.

This investigation has made recommendations with the hope that situations like this can be avoided in the future, that WWK can learn from its mistakes and that the Nation's energies can be directed at the wellbeing of the WWK community as a whole.

A. JASON PRICE'S CONDUCT

1. The Undisclosed Conflict and Payments by K&L Ltd.

(a) Undisclosed Conflict of Interest

By entering a business relationship and accepting payment from K&L Ltd., undisclosed to WWK, Jason Price was in a conflict of interest and in breach of his duty as a Councillor at common law.

For the same reasons, Jason Price was in breach of WWK policies, in particular, section 2.14 of the Operations Manual and his Contract of Office.

(b) Receipt of Payments

By receiving payments from K&L Ltd. in the amount of \$23,900, which were undisclosed to WWK, and for which he has provided no satisfactory explanation, Jason Price is in further breach of his duty as a Councillor at common law.

See Part VII of this report for a more detailed analysis.

2. Allegations Regarding Construction Projects

Linda Spooner alleges that Mr. Price improperly benefited from contracts taken by K&L Ltd. on WWK reserve for CMHC's Residential Rehabilitation Assistance Program ("RRAP") housing projects, the Day Care Project and the Thunderbird Hall Renovation by obtaining labour and material for his own house for which he did not pay in return for obtaining work for K&L Ltd. and accommodating overcharging by the company.

(a) Allegations without merit

Due to serious deficiencies with files maintained by both K&L Ltd. and WWK, in many cases the evidence is inconclusive. In other cases, available evidence does not substantiate the allegations. As a result, the evidence:

- Does not establish the allegations that Mr. Price was undercharged by K&L Ltd. for his home renovation in 2013;
- Does not establish the allegations that Mr. Price obtained a benefit from K&L Ltd.'s work on the Thunderbird Hall, despite the fact that K&L Ltd. appears to have overcharged WWK \$11,000 for the installation of the new floor;
- Does not establish the allegations that K&L Ltd. charges for roofing labour on Ollie Henderson's RRAP project in June and July 2013 were actually for the benefit of Mr. Price;
- Does not establish the allegations that K&L Ltd charges for labour on Maggie Henderson's RRAP project, including for her deck and kitchen demolition, was actually undertaken for the benefit of Mr. Price; and
- Does not establish the allegations that Mr. Price (or his wife) obtained a benefit in the Day Care renovation project.

Suspicion alone regarding benefits Mr. Price, or his immediate family, may or may not have received from K&L Ltd. are not enough to require an explanation from Mr. Price to establish that he did not benefit or otherwise breach his fiduciary duties. Only where the evidence indicates that Mr. Price was likely to have received an undisclosed benefit (as discussed below) is an explanation from Mr. Price required.

(b) *Allegations with merit*

However, with respect to other allegations the evidence raises serious questions about whether Mr. Price received benefits from K&L Ltd. work on RRAP projects, including:

- For labour for the construction of a "little door" on Mr. Price's home in November 2014 that may have been charged by K&L Ltd. to the Quocksister RRAP project;
- From the delivery of \$900 in fencing at Mr. Price's home that K&L Ltd. charged to Ollie Henderson's RRAP project;
- For the \$4,700 in materials and labour for installation of stairs at Mr. Price's home that K&L Ltd. charged to the Lloyd Henderson RRAP project; and
- For the aluminum railing that K&L Ltd. charged to Maggie Henderson's RRAP project but delivered to Mr. Price's home.

Further, it is undisputed that K&L Ltd. prepared an invoice for \$12,172.76 in January 2014 for home renovations K&L Ltd. undertook for Mr. Price. There is no documentary evidence to

establish that Mr. Price paid this invoice,² though during previous investigations Mr. Price advised that he “paid cash”.

Given Mr. Price’s fiduciary obligations and his undisclosed conflict of interest in dealing with K&L Ltd., Mr. Price has an obligation to establish that he paid for the work and materials obtained through K&L Ltd., including for his home renovation and various RRAP projects listed above. Mr. Price chose not to be interviewed as part of this investigation, or provide a response to the Allegations of Wrongdoing, including those with merit. As a result, absent an explanation establishing that Mr. Price did not benefit, as the evidence suggests, he is breach of his fiduciary duties to WWK.

(c) *Overcharging by K&L Ltd.*

The available evidence indicates that K&L Ltd. overcharged on several RRAP projects on WWK Reserve, including on the Lloyd Henderson, Ollie Henderson, Quocksister, Christine Roberts, Maggie Henderson projects. On the Lloyd Henderson project, a \$4,500 overcharge by K&L Ltd. was attributed to an invoice for the same amount from Jason Price. However, given the lack of reliability of the K&L Ltd. files, no firm conclusion can be drawn regarding any of this overcharging. Nor is there any evidence to suggest that Jason Price was aware of this overcharging, although he ought to have been, given his involvement in managing projects on behalf of WWK.

Apparent overcharging in 2016 by K&L Ltd. on the Day Care project was addressed by Ms. Sarsons, which identified K&L Ltd.’s attempt to overcharge WWK an amount in excess of \$50,000.³

See Part VIII of this report for a detailed analysis.

B. ADEQUACY OF INVESTIGATIONS

The Formal Complaint, incorporated in the TOR, alleges that the WWK Council has not taken adequate measures to address the Jason Price matter.

At various times, persons asserting that the investigations were adequate have pointed to several different “investigations”.

For the reasons set out below, none of the investigations which have been cited at the various times can be considered to be thorough and independent.

² There is a note in the Band Manager’s files that Mr. Price informed Ms. Sarsons that he never saw this invoice. Investigation Document 18.

³ In an email received on March 22, 2018 Ms. Spooner advised of an apparent conspiracy between the Band Manager and Mr. Spooner to undercharge WWK for the Day Care project. One of the bases for this assertion appears to be that the Day Care file she received from Mr. Spooner in 2018 had been altered (though there is no evidence of the same). These allegations raise questions about Ms. Spooner’s objectivity and credibility.

1. Investigation by the Band Manager

The investigation by the Band Manager cannot be considered adequate to deal with the Allegations of Wrongdoing:

- The scope of the Band Manager’s investigation was limited to the activities of Jason Price as an employee, not a Councillor.
- The consideration of evidence by the Band Manager was inadequate, in that she did not consider all available evidence, did not follow up on her own demands for details, and accepted the statements of those accused of wrongdoing, Jason Price and Kevin Spooner, without critical analysis.
- The investigation was not independent, since at all times, the Band Manager was under the direction of Chief Pollard.

2. Investigation by Lawyer, Jack Woodward

The investigation by lawyer Jack Woodward cannot be considered adequate:

- As with the investigation by the Band Manager, Mr. Woodward’s investigation was limited in scope to considering the activities of Jason Price as an employee, not as a Councillor.
- Mr. Woodward’s access to evidence was limited to a review of the evidence identified by the Band Manager. He did not seek further evidence and given his instructions, could not consider any evidence which the Band Manager did not consider.
- The investigation was not independent, as at all times Mr. Woodward was acting under the instructions of the Chief and Band Manager.

3. Investigation by Lawyer, Sam Gordon

No investigation was conducted by lawyer Sam Gordon.

4. Investigation by the CMHC

There was no investigation by CMHC into the Residential Rehabilitation Assistance Program On-Reserve (the “RRAP program”) nor the allegations against Jason Price.

5. Investigation by the Department of Indian and Northern Affairs Canada

Due to its limited scope, the INAC investigation was not adequate to deal with the allegations against Jason Price.

6. Investigation by Lawyer, Berry Hykin

Given the limited time and limited evidence available to Ms. Hykin when she prepared her memorandum and the fact that she was acting under the instructions of Chief Pollard and the Band Manager, her investigation cannot be considered adequate to deal with the allegations against Jason Price.

7. Investigation by the RCMP

Although the RCMP investigation was fully independent, and carried out by trained investigators over the period of a year, it cannot be considered adequate to deal with the allegations. The RCMP restricted their investigation to criminal matters and did not (and could not, given their role), consider the law of fiduciary duty or WWK policies.

A detailed analysis of the adequacy of the investigations is found below at Part IX of this Report.

C. MISINFORMATION

The Formal Complaint, incorporated in the TOR, alleges that the WWK Band Administration inappropriately inserted themselves into the various investigations and closed their minds to Ms. Spooner and her evidence. The Formal Complaint further alleges that the Band Manager and Chief Pollard spread misinformation about the investigations and then used the threat of a defamation lawsuit to quell the concerns of WWK Membership about how the Allegations of Wrongdoing were handled and the appropriateness of Mr. Price's conduct.

Based on the available evidence, including meeting minutes from WWK Annual General Meetings ("AGM"), there is merit to many, but not all aspects of the Formal Complaint. In particular:

- There is merit to the complaint that Chief Pollard and the Band Manager inserted themselves into investigations into the Allegations of Wrongdoing. In particular:
 - Chief Pollard inserted himself into the investigation by the Band Manager in March 2016 that was neither thorough nor independent and both Chief Pollard and the Band Manager failed to adequately consult or involve WWK Council about the response to the Allegations of Wrongdoing; and
 - Chief Pollard inserted himself into the INAC investigation and took steps to undermine the investigation with the assistance of legal counsel acting on his instructions.
- There is some merit to the complaint that WWK closed its mind to evidence from Ms. Spooner, however this only occurred in 2017. Other aspects of the Formal Complaint regarding WWK's response to Ms. Spooner are without merit. In particular, the complaint that WWK acted inappropriately in failing to keep Ms. Spooner apprised of the status of investigations is without merit as Ms. Spooner is not a WWK member.

- There is merit to the complaint that WWK Administration spread misinformation about the adequacy of investigations. On numerous occasions, including at AGMs, the Band Manager and Chief Pollard misrepresented the extent, thoroughness and independence of the investigations into the Allegations of Wrongdoing. For example, there was never an audit or investigation into the RRAP program by CMCH as stated by Chief Pollard and the Band Manager to both WWK membership and WWK’s lawyers.
- There is no evidence of unwarranted and shameful attacks on Ms. Spooner, though some public communications implied that Ms. Spooner was unreliable as a result of her divorce proceedings without questioning the reliability of Mr. Spooner.
- There is evidence that Chief Pollard spread misinformation regarding Mr. Price’s work for the Campbell River Storm.
- By telling WWK membership that they could be sued for signing a petition seeking the removal of Mr. Price from office, in an attempt to quell community debate, Chief Pollard acted in a manner that is inconsistent with his role a democratically elected Chief Councillor.

See Part X of this Report for additional analysis.

D. REMEDIES

Remedies available to WWK Council and WWK Membership include:

1. Seek Remedies for Breach of Fiduciary Duty in Court.

WWK could initiate court proceedings against Mr. Price for breach of fiduciary duty, seeking disgorgement of benefits Mr. Price received as a result of his breach of duty, including the \$23,900 he received from K&L Ltd and the value of any benefits he may have obtained in the renovation of his house.

Parties who engage with a fiduciary in breach of the fiduciary obligations may also be held liable and in this case there are a number of ways in which liability may attach to K&L Ltd.

Limitation periods may preclude some or all of these claims and legal advice should be sought in this regard.

2. Initiate Removal Proceedings.

As a result of Mr. Price’s breach of the WWK Operations Manual and Code of Ethics, his violation of the Contract of Office and his failure to maintain a standard of conduct expected of a member of Council, both WWK Council and WWK members have grounds to initiate proceedings to remove Mr. Price from WWK Council under the WWK Election Code.

3. Request that Mr. Price resign from WWK Council.

WWK Council may also request that Mr. Price repay the \$23,900 obtained from K&L Ltd., and agree not to run for WWK Council for up to 6 years.

4. Do Nothing.

WWK Council has no obligation to take further steps as a result of this Report and may determine the Report is sufficient to clear the air.

5. Adopt and Implement the Recommendations.

Irrespective of the above options, WWK Council should consider adopting and implement the recommendations set out in Part XII.

Details regarding potential remedies are found at Part XI of this Report

E. RECOMMENDATIONS

Recommendations arising from the investigation, as contemplated by the Terms of Reference, are set out at Part XII of this Report.

PART IV - INVESTIGATION PROCEDURE AND EVIDENCE

A. INVESTIGATION PROCEDURE

The TOR adopted by Band Council Resolution, November 8, 2017, established the procedure which was followed in this investigation.⁴

The TOR (para 9) provide that the investigator will:

- Obtain relevant information from the Wei Wai Kum Council, including the Council's understanding of the allegations, reports of previous investigations, documents, and relevant Wei Wai Kum policies, codes of conduct and bylaws;
- Make inquiries of and obtain information from Wei Wai Kum administration and employees as required;
- Obtain relevant information from Linda Spooner, including details of her allegations of impropriety, and the basis of those allegations;
- Obtain relevant information from Frances Roberts, including details of her allegations of impropriety, and the basis of those allegations;

⁴ The Terms of Reference are attached to this report as Appendix A.

- Conduct interviews and obtain information from Wei Wai Kum members and other persons who may have relevant information respecting the Allegations of Wrongdoing and the Formal Complaint;
- Review documents and previous investigation reports in light of the specific allegations;
- Obtain other relevant documents as appropriate;
- Ensure that Mr. Price is given a full opportunity to respond to allegations of misconduct or wrongdoing;
- Make findings of fact respecting the Allegations of Wrongdoing and the Formal Complaint; and
- Consider relevant law, including the general law of fiduciary duty, and Wei Wai Kum laws and policies, to determine whether there has been wrongdoing or inappropriate conduct on the part of Mr. Price in his capacity as an elected Councillor of Wei Wai Kum First Nation.

The investigation has involved obtaining and reviewing over one thousand documents, conducting seventeen interviews and extensive follow-up of both interviews and documents obtained. Details are provided below.

B. EVIDENCE

In conducting this investigation, it has been necessary to find and consider the evidence for and against the various allegations which have been made. Evidence is anything which may be used to prove a fact, or support or disprove an assertion. Evidence must be distinguished from opinion and belief, which is often based on what people hear from others (hearsay) or suspect to be the case on account of circumstances (speculation).

In considering evidence put forward by those both for and against the Allegations of Wrongdoing, I have not applied the strict rules of evidence which would apply in a court of law, but I have found those rules to be instructive. Thus, I have disregarded statements made by a person on the basis of what they have heard from another person. I have also disregarded documents where it is not possible to evaluate their authenticity or reliability.

For example, photocopies of timesheets prepared by K&L Ltd. employees which are handwritten, cover many jobs and tasks and appear to have been prepared in the ordinary course of business, have been regarded as reliable evidence. On the other hand, photocopies of handwritten notes and calculations, which have no certainty of authorship, date of preparation or purpose, have been generally disregarded. In between these extremes there are accounting records, some of which can be relied on as a consequence of the correspondence between spreadsheet entries and related material bills and labour charges.

In assessing the adequacy of previous investigations and issues respecting misinformation alleged by the Formal Complaint, I have relied on correspondence and documents from the files of the WWK administration and the WWK law firm, Woodward & Company LLP.

C. INTERVIEWS

Interviews were conducted with persons who claimed to have knowledge of the matters raised in the Terms of Reference, or whom were identified by others as having such knowledge. A total of 17 persons were interviewed. Several follow up interviews were conducted.

Interviews were held in person or by telephone. In most cases the interviews were recorded however, full transcripts of those interviews have not been prepared. Evidence obtained in interviews is discussed in those sections of this report which analyze the various allegations.

The following persons were interviewed:

- Linda Spooner, co-owner of K&L Ltd. in 2013-2016, owner of the Campbell River Storm hockey team and initiator of allegations against Jason Price;
- Frances Roberts, WWK Band member and initiator of the Formal Complaint;
- Councillor and acting Chief Curtis Wilson;
- Councillor Tony Roberts Jr.;
- Councillor Marian Atkinson;
- Councillor Chris Drake;
- Councillor Chris Roberts;
- Former Councillor Dana Roberts;
- Chief Robert Pollard;
- Band Manager Angie Sarsons;
- Kevin Spooner, co-owner of K&L Ltd. in the years 2013-2016, former spouse of Linda Spooner;
- RCMP Inspector Jeff Preston;
- Jami Harris, Office Manager with Campbell River Storm hockey team, and part-time employee of K&L Ltd. during 2014 and 2015;
- Coral Atkinson, WWK Band member;
- Dana and Maggie Henderson, WWK Band members;

- Wayne Atkinson;⁵
- Darryn Ludwikowski ;⁶and
- Wes Roed, with Cogent Technical & Design, who provides IT services to K&L Ltd. and the Campbell River Storm.

The interviews were valuable in determining what the interviewees believe to be the case, and thus determining the scope of the allegations of wrongdoing. However, relatively little factual information was obtained from the interviews, as the assertions of fact were generally based on information which the interviewees had heard from other persons, rather from their own personal knowledge.

There are some exceptions to this observation:

- The Chief, Councillors, and Band Manager were able to speak of their personal involvement in investigating the Allegations of Wrongdoing and in communicating with band membership;
- Members were able to describe their interactions with the Chief, Council, and Band Administration with respect to the allegations in the Formal Complaint;
- Kevin Spooner was able to discuss his business dealings with Jason Price;⁷
- Linda Spooner was able to describe her personal knowledge of the operations of K&L Ltd., her knowledge of the company files, and her interactions with the Chief and Band Manager;
- Jami Harris was able to describe the office administration of the Campbell River Storm hockey team, her work providing administrative support to K&L Ltd., and her awareness of the involvement of Jason Price with the Campbell River Storm and K&L Ltd.

In each case, it was necessary to weigh the evidence provided by individuals against contradictory or inconsistent evidence provided by other individuals or the documentary record, as well as determining the relevance of the individual's evidence to the TOR.

I requested to arrange an interview with Jason Price to provide his explanation respecting the allegations, but he declined to be interviewed. (Discussed further below).

⁵ Wayne Atkinson was spoken to briefly on December 5, 2017 and he provided further information that was considered as part of this investigation, including by letter dated March 21, 2018.

⁶ Darryn Ludwikowski was spoken to briefly on December 4, 2017 and subsequently provided numerous documents that were considered as part of this investigation.

⁷ However, Mr. Spooner was uncooperative in the course of my interview, failed to answer questions and provided only vague generalities in response to others.

D. DOCUMENTS

Documents were initially obtained from WWK administration; WWK's general counsel (Woodward & Company LLP); and Linda Spooner; each having been requested to provide all documents relevant to the TOR. Additional documents were provided by persons interviewed.

Following the initial interviews and a review of the documents which had been provided, further documents relating to specific issues were requested from the Band Administration, Linda Spooner and WWK's legal counsel Ms. Hykin.

Approximately 1,000 documents⁸ were obtained and reviewed, including:

- Band housing files;
- K&L Ltd. housing files;
- Invoices;
- Accounting spreadsheets;
- Notes;
- Emails;
- Court Documents;
- Meeting minutes;
- Legal opinions and memos;
- Reports;
- Photographs;
- Policy documents.

Generally, the documents provided more information about the issues than the interviews. However, in many cases the documents did not provide a complete picture of events. In particular, the housing files, provided by both WWK Band administration and Linda Spooner were incomplete in significant measure.

The value (or lack of value) of the various documents is discussed in those sections of the report which analyze the various allegations.

⁸ These documents ranged from invoices of a single page, to multi-page reports and meeting minutes.

See **Appendix B** to this report for a list of documents reviewed during the course of the investigation. References are made to these documents throughout the report.

E. FAIRNESS TO JASON PRICE

Given the seriousness of the Allegations of Wrongdoing, it was necessary to ensure that Jason Price had an opportunity to respond to the allegations. As this investigation has no authority to compel Mr. Price or anyone else to provide information, it was open to him to decline to be interviewed, and he did decline.

1. Fiduciary Duty

As a Councillor, Mr. Price owed a fiduciary duty to the WWK. This duty includes an obligation to explain himself in any situation where he is apparently in breach of his fiduciary duties. Having an undisclosed conflict of interest in respect of his relationship with K&L Ltd., Mr. Price had an obligation to explain apparent irregularities.

Thus, Jason Price was provided a full opportunity to provide an explanation respecting the allegations against him. In the result, Jason Price declined to be interviewed and I have identified facts which appear to establish wrongdoing, absent an appropriate and adequate explanation.

2. Investigation Process

In the course of my requests to interview Jason Price, his lawyer, Simon Wells, raised various objections to my investigation. Mr. Wells' has asserted that my Terms of Reference are unfair, that I am conducting a hearing, and that I am providing no procedural fairness to his client, Mr. Price. However, Mr. Wells provided no legal authority to back up his claims.

As a consequence of the objections, and in accordance with Mr. Wells' request that I "give this some further thought" (letter January 29, 2018), I researched the law respecting investigations of this nature.

My conclusion, based on a review of the authorities, is that the Terms of Reference are appropriate, this investigation is not a hearing, and there is no unfairness to Mr. Price.

My correspondence with Mr. Wells is attached as **Appendix C** to this Report.

F. MATTERS OUTSIDE THE TERMS OF REFERENCE

During the course of the investigation a number of matters were brought to our attention which fell outside the TOR and thus were not investigated. These included allegations that:

- Chief Pollard works for external entities, including Nanwakolas Timber, contrary to Band Policy;
- A by-election is required as a result of the length of Chief Pollard's leave;

- Wei Wai Kum Councillors have been formally reprimanded when they were not, in fact, in breach of Band policy;
- Work funded by CMHC on reserve has been inadequate;
- Members have been unable to address Council on the basis of contradictory policies which are not uniformly applied; and
- Council has failed to conform to policies in publishing agendas and minutes.

PART V - CHRONOLOGY

The following is a basic chronology relating to the matters raised in the TOR.

A. EVENTS PRIOR TO ALLEGATIONS OF WRONGDOING (2009 – 2015)

February 19, 2009 – Jason Price executes Contract of Office after being elected to Council (attached as **Appendix D**).

2013-14 – Renovation carried out by K&L Ltd. on Jason Price’s house.

2013-15 – Work carried out by K&L Ltd. on home renovations on WWK reserve funded through the CMHC’s RRAP program. In 2013-14 K&L Ltd. also did work on the Thunderbird Hall Renovation.

2013– Jason Price starts as WWK Lands, Housing and Public Works Administrator.

February 25, 2013 – Councillors Jason Price and Dean Drake appointed to the WWK housing portfolio. Shelly Haunch took over this portfolio on February 23, 2015.⁹

Between February 21, 2014 and March 26, 2015, Jason Price receives \$23,900 from K&L Ltd.

- February 21, 2014 – Jason Price receives a cheque for \$5,000 from K&L Ltd., signed by Linda Spooner; the cheque is not associated with any invoice #.¹⁰
- March 19, 2014 – Jason Price issues invoice #110 for \$6,200 to K&L Ltd. for “capacity building”.
- March 24, 2014 – Jason Price issues invoice #100 for \$5,000 to K&L Ltd. for “consulting services”.¹¹

⁹ February 23, 2015, WWK Council Minutes (Appendix B, Document 22B).

¹⁰ As noted below Jason Price’s lawyer advised that the invoice predating this cheque was created on February 18, 2014 and provided to K&L Ltd. shortly thereafter.

¹¹ Mr. Price’s lawyer, Simon Wells, advised that the date on this invoice is incorrect and it should be dated sometime in February: “I am instructed that the actual word document provided by Mr. Price to Mr. Spooner was created in February 2014 and sent shortly afterwards. [...] the invoice document was created at 11:26 am February 18, 2014 by

- March 26, 2014 – Jason Price receives a cheque for \$6,200 from K&L Ltd., signed by Linda Spooner for invoice #110.
- August 19, 2014 – Jason Price issues invoice #110¹² for \$4,500 to K&L Ltd. for “capacity building”.
- August 19, 2014 – Jason Price receives a cheque from K&L Ltd. for \$4,500 signed by Linda Spooner not associated with any invoice number.
- November 13, 2014 – Jason Price issues invoice #156 for \$2,000 to K&L Ltd. for “capacity building”.
- November 13, 2014 – Jason Price receives a cheque from K&L Ltd. for \$2,000 signed by Linda Spooner for invoice #4.¹³
- December 11, 2014 – Jason Price issues invoice #157 for \$5,000 to K&L Ltd. for “capacity building”.
- December 12, 2014 – Jason Price receives a cheque from K&L Ltd. for \$5,000 signed by Linda Spooner for invoice #157.
- March 20, 2015 – Jason Price issues invoice #159 for \$1,200 to K&L Ltd. for “capacity building”.
- March 26, 2015 – Jason Price receives a cheque for \$1,200 from K&L Ltd., signed by Linda Spooner for invoice #159.

(For copies of invoices and cheques see **Appendix F** of this Report).

August 31, 2015 – WWK awards contract for renovation of Kwanwatsi Day Care centre to K&L Ltd. Mr. Price was not present at the meeting and no conflict of interest was declared on the record. Work on the Day Care centre was completed in early 2016.

November 2015 – AGM held. In response from questions from Francis Roberts, Chief Pollard advises that contracts on reserve are awarded by Council.

“Jason” and has not been revised since that date” (See: Appendix B, Document 107, July 21, 2017 email from Simon Wells to Berry Hykin re: Further Revised Summary Report Campbell River).

¹² Note: this appears to be an invoice numbering error, as invoice #110 was issued and paid in March for \$6,200 and a second invoice #110 was issued in August for \$4,500.

¹³ This cheque appears to be the fourth cheque issued to Jason Price from K&L Ltd., which may be the reason invoice #4 appears on the cheque, rather than invoice #156.

B. ALLEGATIONS OF WRONGDOING AND RESULTING INVESTIGATIONS

March 1, 2016 – Linda Spooner emails Chief and Council, making the Allegations of Wrongdoing. Within hours Chief Pollard forwards the email to Jason Price.

March 7, 2017 – Linda Spooner comes to the WWK Offices and provides copies of invoices and cheques made out to Jason Price. Chief Pollard, Marian Atkinson, Dana Roberts and the Band Manager are all in attendance.

March 8, 2016 – Chief Pollard meets with Jason Price. Jason Price is placed on leave and the Band Manager advises that an investigation is needed to “address the serious allegations against you”. The Band Manager requests detailed notes on Mr. Price’s invoices by March 10, 2016. Council is cc’d.

March 8, 2016 – Kevin Spooner’s lawyer calls Chief Pollard after the Chief asked to meet with Mr. Spooner.

March 9, 2016 – Dana Roberts emails the Band Manager asking for details on the investigation.

March 10, 2016 – Chief Pollard, Curtis Wilson and the Band Manager meet with Kevin Spooner.

March 12, 2016 – Marian Atkinson emails the Band Manager asking for details on the investigation, including clarification about who the investigator is.

March 14, 2016 – Band Manager, Vicky Lagos and Curtis Wilson meet with Mr. Price. Mr. Price explains that he provided technical expertise to K&L Ltd. but that he did not moonlight for Mr. Spooner. Mr. Price fails to provide specific examples of work he did for K&L Ltd., stating his hard-drive was ruined and could not be recovered.

March 14, 2016 – The Band Manager and Dean Drake meet with Linda Spooner. Linda Spooner shows a copy of Jason Price’s “file folder” and some files related to a gate for Ollie Henderson funded through the RRAP program.

March 14, 2016 – The Band Manager emails WWK Council advising that the investigation is under her “jurisdiction” and that she will meet with council as a “whole” to discuss her findings “and what needs to happen.”

March 15, 2016 – The Band Manager and Curtis Wilson meet with Jason Price to discuss allegations regarding the RRAP program.

March 15, 2016 – The Band Manger and Dean Drake meet with Linda Spooner. Linda Spooner provides additional documentation received form the court related to her divorce. The Band Manager then meets with Kevin Spooner to discuss the additional information provided by Ms. Spooner.

March 15, 2016 – The Band Manager meets with lawyer Jack Woodward to go over her findings.

March 16, 2016 – The Band Manager completes her investigation and invites Mr. Price to return to work (see **Appendix N** for a copy of the Band Manager’s Report).

March 17, 2016 – Lawyer Jack Woodward writes to Chief Pollard providing a review of the internal procedure used to consider the Allegations of Wrongdoing. The letter was requested by the Band Manager. (See **Appendix O** for a copy of Mr. Woodward’s letter).

March 21, 2016 – WWK Council meet in-camera to discuss the Band Manager’s findings and Jack Woodward’s March 17, 2016 letter. Details of the meeting are unavailable. The Band Manager’s notes indicate that Council voted in favour of accepting the report, but Councillors Marian Atkinson and Dana Roberts did not.

May 30, 2016 – CMHC writes to WWK, providing a report on “On-Reserve Non Profit Housing Program (NHA Section 95)”. The report does not discuss the RRAP program, which was the subject of the Allegations of Wrongdoing. (See **Appendix P** for a copy of the CMHC letter).

June 23, 2016 –In response to demands from WWK members that Jason Price be dismissed from Council, Chief Pollard discusses the civil suit of defamation with lawyer Jack Woodward, Q.C., on an “emergency basis”.

June 24, 2016 – WWK Community Information Session held. Chief Pollard discusses steps taken by WWK to respond to the Allegations of Wrongdoing, including by hiring “two lawyers” and relying on INAC to review the housing program.

June 29, 2016 – Chief Pollard writes to WWK membership regarding a petition naming Jason Price. The notice states that the petition “makes allegations against Jason Price that are completely false and unsubstantiated.” The Chief advises that “two independent legal opinions” have found no wrongdoing and INAC’s conducted an annual audit.¹⁴ “There has been no wrongdoing.” The notice also advises that “If the statements in the petition are not true, then people who sign the petition can be sued.”

July 2016 – INAC contacts Chief Pollard about doing an internal investigation into the Jason Price matter.

July 8, 2016 – Chief Pollard contacts lawyer Jack Woodward about INAC’s investigation. The Chief instructs Mr. Woodward that “if he can give them ‘a little bit’, some little thing, orally that would help them close their file, to do so.” In the subsequent weeks, and into August, Chief Pollard, WWK’s lawyers and Mr. Price’s lawyer, Simon Wells, email and have telephone calls. Discussions include how the scope of INAC’s investigation oversteps INAC’s policy.

July 27, 2016 – On the instruction of Chief Pollard, lawyer Jack Woodward calls Simon Wells. Mr. Wells requests a report specifying the details of Mr. Price’s explanation (as stated Jack Woodward’s March 17, 2016 letter to Chief Pollard) that could provide the basis for a credible claim of defamation.

¹⁴ The Chief later corrects his statements, advising he meant to refer to a CMHC audit.

July 29, 2016 – Jack Woodward meets with Chief Pollard to discuss Jason Price’s “innocent explanation” and get instructions to send it Mr. Wells.

August 23, 2016 – Jack Woodward meeting with the Band Manager to discuss the letter to Mr. Wells outlining Mr. Price’s “innocent explanation.”

August 24, 2016 – Chief Pollard writes to WWK membership to correct previous references made to an INAC audit in his June 29, 2016 statement, advising that he meant to refer to a CMHC audit.

August 24, 2016 – On Chief Pollard’s instructions, lawyer Jack Woodward writes to lawyer Simon Wells regarding Mr. Price’s “Innocent Explanation” to the Allegations of Wrongdoing for the purpose of strengthening Mr. Price’s proposed defamation suit against WWK members.

August to September, 2016 – Correspondence exchanged, including with lawyer Simon Wells, regarding the appointment of an arbitrator in response to the community petition. An arbitrator is never appointed.

November 2016 – WWK AGM held. The Band Manager describes her investigation and the importance of having “valid proof” before taking action against Mr. Price. Chief Pollard suggests CMHC considered the matter and that a review by a lawyer was sufficient to answer members’ concerns.

January 13, 2017 – Chief Pollard receives letter from INAC providing a review “of allegations of kick-backs at Wei Wai Kum First Nations” (the “Fact Verification Report”) and requests a response.

January 25, 2017 – Chief Pollard writes to INAC providing detailed comments on their Fact Verification Report.

February 17, 2017 – INAC responds to Chief Pollard providing a summary report of findings (the “Summary Report”).

February 22, 2017 – Jack Woodward provides the Band Manager with a summary of INAC’s Summary Report, advises that many of the issues INAC considered are none of INAC’s business as INAC’s job was to “investigate misuse of federal funds” and that there is no problem in sharing INAC’s Summary Report with membership.

February 23, 2017 – Lawyer Sam Gordon writes to advise that Mr. Price’s lawyer is “strongly opposed” to sharing the Summary Report with membership.

February 27, 2017 – Jack Woodward advises that, following a conversation with Mr. Price’s lawyer about the threat of defamation, he no longer recommends sharing the Summary Report with membership or members of Council. That would “repeat a defamation.” Mr. Wells “could go to court and get an injunction to prevent the report from being provided to members of council.”

May 3, 2017 – The Band Manager provides WWK’s lawyer, Ms. Hykin, with documents for review, including the Band Manager’s report, Mr. Woodward’s review of the same, Jack Woodward’s August 24, 2016 letter to Simon Wells regarding “Jason Price: the ‘Innocent Explanation’” and a few items of correspondence.

May 8, 2017 – WWK Council discuss the INAC investigation. WWK’s lawyer Ms. Hykin presents her review of the investigations into the Allegations of Wrongdoing. WWK Council directs Ms. Hykin to follow-up with INAC regarding the scope of their authority for the investigation.

May 9, 2017 – Ms. Spooner emails the Chief, Councillors and the Band Manager asking for a copy of the Band’s report on Mr. Price and attaching an excerpt from Kevin Spooner’s February 2016 affidavit which described Mr. Price’s work for K&L Ltd. as “capacity building”. Ms. Spooner advises that all of her “files available to anyone upon request” and that she is “definitely NOT a “disgruntled ex-wife.””

May 17, 2017 – Lawyer Berry Hykin writes to INAC expressing concern with the February 2017 Summary Report, including risks that WWK will be sued for defamation if the report is made public.

May to August 2017 – Lawyer Mr. Wells contacts WWK’s lawyer, Ms. Hykin, regarding the possibility releasing the INAC report and a resulting suit for defamation. Ms. Hykin and Mr. Wells engage in discussions regarding sharing the INAC report with membership.¹⁵ On August 1, 2017, Mr. Wells advised that the INAC report can be shared with WWK Council on a confidential basis and on August 15, 2017, Mr. Wells agreed to the release of the INAC report to WWK members.

July 5, 2017 – Ms. Spooner follows up on her May 9, 2017 email to the Band Manager with an email to Chief, Council and the Band Manager alleging that the Band Manger had never asked for Ms. Spooner’s complete files and “never made an attempt to dig deeper for a clearer understanding before you cleared Jason Price and Kevin Spooner of any wrongdoing”.

July 6, 2017 – In response to an email from the Band Manager, lawyer Berry Hykin drafts a letter to Ms. Spooner that advises that if Ms. Spooner has “additional information that ... may be relevant and that has not previously been shared, I hope you will send it along. We would then review it and consider whether it warrants a reopening of the investigation. If not, this matter is considered resolved and the investigation file closed.” The draft letter is provided to the Band Manager.

July 7, 2017 – The Band Manager responds to Ms. Spooner’s May 9 and July 5, 2017 emails thanking her for her ongoing interest, but omits any reference to WWK’s willingness to receive additional information as recommended by lawyer Barry Hykin. The Band Manager forwards a copy of the letter to WWK Council.

¹⁵ Lawyer Berry Hykin did not provide all documents relevant to the investigation, including some correspondence with Mr. Wells, on the basis that these communications were confidential and without prejudice.

June 13, 2017 – INAC advises that it has reviewed WWK’s comments and is revising the Summary Report.

July 17, 2017 – WWK members attend a Council meeting and ask questions regarding WWK’s handling of the Allegations of Wrongdoing.

July 20, 2017 – INAC provides revised “Summary Report”. The report is then forwarded to Mr. Price’s lawyer to request his permission to release the Summary Report to WWK Council. (See **Appendix Q** for a copy of the revised Summary Report).

August 15, 2017 – Curtis Wilson advises that the Summary Report can be shared but Councillors and employees should be very cautious about comments on the report due to the threat of litigation.

August 21, 2017 – INAC meets with Council to discuss the July 20, 2017 report. The report notes that the scope of the investigation is limited to whether INAC funds were misused.

October 12, 2017 – The Band Manager gives a statement to the RCMP regarding Mr. Price. The statement outlines community context and describes the people who have brought allegations against Mr. Price and continue to press the issue.

October 13, 2017 – The Band Manager gives the RCMP a memo regarding further information obtained regarding Kevin and Linda Spooner.

November 14, 2017 – The RCMP advises the Band Manger that there is no evidence “to support the claims” against Mr. Price.

November 8, 2017 – WWK Council retains John Rich to undertake this investigation via BCR.

November 20, 2017 – AGM is held and the Band Manager makes various statements regarding steps taken to respond to the Allegations of Wrongdoing, including regarding the INAC investigation and the RCMP’s criminal investigation. The Band Manager also made statements about the strictness of the CMHC program.

PART VI - LAW AND POLICY

A. INTRODUCTION

The actions of WWK Chief and Councillors are governed by both law and policy.

The applicable law includes the law of fiduciary duty.

WWK policies include:

- a. The Campbell River Indian Band, WWK, Operations Manual: Organizational Policies and Procedures, as amended from time to time; and

- b. Campbell River Indian Band Chief and Council Contract of Office, which is signed by elected Councillors.

WWK Policies generally reflect the law of fiduciary duty.

B. FIDUCIARY DUTY

The law of fiduciary duty requires:

A duty of utmost good faith, trust, confidence, and candor owed by a fiduciary to a beneficiary [...]; a duty to act with the highest degree of honesty and loyalty toward another person and in the best interests of the other person.¹⁶

Courts have confirmed that elected Chiefs and Councillors owe fiduciary duties to their Bands and Band members:

There can be no question that a duly-elected chief as well as the members of a band council are fiduciaries as far as all other members of the band are concerned. The chief upon being elected, undertakes to act in the interest of the members of the band. The members of the band are vulnerable to abuse by the fiduciary of his or her position, and a fiduciary undertakes not to allow his or her interest to conflict with the duty that he or she has undertaken.¹⁷ [emphasis added]

1. Conflict of Interest

A conflict of interest is “A real or seeming incompatibility between one’s private interests and one’s public or fiduciary duties.”¹⁸ As summarized by the Supreme Court of Canada:

equity “forbids trustees and other fiduciaries from allowing themselves to be placed in ambiguous situations. . . . [T]hat is, in a situation where a conflict of interest and duty might occur” (D. W. M. Waters, M. R. Gillen and L. D. Smith, eds., *Waters’ Law of Trusts in Canada* (3rd ed. 2005), at p. 914). As M. Ng writes, in *Fiduciary Duties: Obligations of Loyalty and Faithfulness* (loose-leaf), at p. 2-10:

Where fiduciaries put themselves in a position where their own interests or those of others may conflict with their duty to their principal, they will be required to disclose all material information regarding the transaction in order to obtain their principal’s informed consent as to their acting despite the conflict.¹⁹

2. Rule against Personal Gain

The rule against conflicts is connected to the rule that fiduciaries cannot profit from their fiduciary position or knowledge resulting from it (without consent). The rule’s objective is to

¹⁶ Black’s Law Dictionary, 9th ed. p 581.

¹⁷ *Gilbert v. Abbey*, 1992 CanLII 921 (BC SC), [1992] 4 C.N.L.R. 21 (B.C.S.C.) at page 23.

¹⁸ Black’s Law Dictionary, p 341.

¹⁹ *Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.*, 2011 SCC 23, at para 148.

“preclude the fiduciary from actually misusing his position for his personal advantage.”²⁰ This rule applies “to the use of any aspect of the beneficiary’s property, be it assets, goods, information or opportunities.”²¹

This is a strict rule that applies even if the beneficiary did not have the ability to profit itself.²²

3. Requirement to Disclose, and Receive Consent for, a Conflict (or Potential Conflict) of Interest

Consent required for a Conflict, or Potential Conflict

Unless first receiving consent,

[N]o one having duties of a fiduciary character to discharge shall be allowed to enter into engagements or assume functions in which he has or can have a personal interest conflicting or which possibly may conflict with the interests of those he is bound to protect.²³ [emphasis added]

This includes *potential* conflicts of interest.²⁴

The objective of the rule against undisclosed conflicts is “to preclude the fiduciary from being swayed by considerations of personal interest”²⁵ and to ensure there is no prejudice to the beneficiary’s right to utmost loyalty and avoidance of conflict.²⁶ The law of equity, “forbids trustees and other fiduciaries from allowing themselves to be placed in ambiguous situations.... [T]hat is, in a situation where a conflict of interest and duty might occur.”²⁷

Obtaining Consent for Conflicts and Potential Conflicts

Fiduciaries can enter into transactions in which their personal interests and that of their beneficiary might conflict but only with the “disclosure of all material facts to the principal so as to obtain consent”.²⁸

²⁰ *Chan v. Zacharia* (1984) 154 C.L.R. 178, (quoted with approval by the majority in *Strother v. 3464920 Canada Inc.* 2007 SCC 24 (CanLII) at para. 75 and cited by *Louie v. Louie*, 2015 BCCA 247 at para 23). Also see: *Canadian Aero Services Ltd. v. O’Malley*, [1974] 1 SCR 592.

²¹ Ellis, *Fiduciary Duty in Canada*, Carswell Looseleaf (2016 – Rel. 6) at p 1-5.

²² Ellis, *Fiduciary Duty in Canada*, Carswell Looseleaf (2016 – Rel. 6) at p 1-5; also see *Capobianco v. Paige* (2007), [2007] OJ No 3423, 36 BLR (4th) 229 (Ont. SCJ) at para 238.

²³ *Davis v. Kerr* (1890), 17 SCR 235, p 246 per Taschereau J.

²⁴ Ellis, *Fiduciary Duty in Canada*, Carswell Looseleaf (2016 – Rel. 6) at p 1-6, 19-16 to 19-7.

²⁵ *Chan v. Zacharia* (1984) 154 C.L.R. 178, (quoted with approval by the majority in *Strother v. 3464920 Canada Inc.* 2007 SCC 24 (CanLII) at para. 75 and cited by *Louie v. Louie*, 2015 BCCA 247 at para 23).

²⁶ Ellis, *Fiduciary Duty in Canada*, Carswell Looseleaf (2016 – Rel. 6) at p 1-6.

²⁷ *Sharbern Holding Inc. v Vancouver Airport Centre Ltd.*, [2011] 2 SCR 175, 2011 SCC 23, at para 148, citing D. W. M. Waters, M. R. Gillen and L. D. Smith, eds., *Waters’ Law of Trusts in Canada* (3rd ed. 2005), at p. 914)

²⁸ *Sharbern Holding Inc. v Vancouver Airport Centre Ltd.*, 2011 SCC 23, at para 149 (emphasis added), citing F. M. B. Reynolds in *Bowstead and Reynolds on Agency* (17th ed. 2001), at para. 6-057.

The fiduciary is responsible for complete disclosure of any material information, including all information relevant to the fiduciary's mandate,²⁹ in order to obtain informed consent to act in a conflict.³⁰

In order to avoid a breach of fiduciary duty the Band Councillor must ensure “full disclosure of the conflict” and that the Band give “its informed consent”.³¹ Courts have found fiduciary obligations have been met in situations where Band Councillors have “informed the band and council” of their conflict, “sought approval of the band” for the same and abstained from voting or participating “in any decisions” related to the conflict.³² On the other hand, failure to declare a conflict to one's Band Council and continuing to participate in decisions on related matters falls “far short of the full disclosure and informed consent necessary to condone a breach of fiduciary duty.”³³

While there is some authority for a “flexible” approach to conflicts of interest, these cases only apply when the conflict has been disclosed and the beneficiary is seeking disgorgement of a profit.³⁴ The weight of authority favours the strict approach requiring full disclosure and informed consent to a conflict of interest, before the fiduciary can benefit.

Secret Profits Are Prohibited

Fiduciaries are prohibited from making “secret” profits. This “is premised upon a behavior requirement universal to all fiduciary scenarios – the duty to provide full disclosure respecting trust matters to those to whom he owes utmost good faith.”³⁵

4. The Fiduciary's Obligation to Demonstrate Compliance with its Duties

As stated in *Blueberry River Indian Band v. Canada* (Department of Indian Affairs and Northern Development), [1995] 4 SCR 344:

a fiduciary involved in self-dealing, i.e. in a conflict of interest, bears the onus of demonstrating that its personal interest did not benefit from its fiduciary powers: J. C. Shepherd, *The Law of Fiduciaries* (1981), at pp. 157-59; and A. H. Oosterhoff: *Text, Commentary and Cases on Trusts* (4th ed. 1992).³⁶

²⁹ Ellis, *Fiduciary Duty in Canada*, Carswell Looseleaf (2016 – Rel. 6), citing *Capobianco v. Paige* (2007). [2007] O.J. No. 3423, 26 BLR (4th) 229 at para 238.

³⁰ *Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.*, 2011 SCC 23, at para 148 citing *Waters' Law of Trusts in Canada* (3rd ed. 2005), at p. 914). As M. Ng writes, in *Fiduciary Duties: Obligations of Loyalty and Faithfulness* (loose-leaf), at p. 2-10.

³¹ *Silver v. Ned*, 2002 BCSC 944, at para 25 (emphasis added).

³² *Solomon v. Alexis Creek Indian Band*, 2007 BCSC 459, at para 61.

³³ *Silver v. Ned*, 2002 BCSC 944, at para 25.

³⁴ *Loue v. Louie*, para 27-28, citing cases *Tornroos v. Crocker*, [1958] SCR 151, *Peso Silver Mines Ltd. v. Cropper*, [1996] SCR 673 and *Hawrelak v. City of Edmonton*, [1976] 1 S.C.R. 387 were the fiduciaries had disclosed their conflicts, and beneficiaries later sought to have profits disgorged, but were unsuccessful.

³⁵ Ellis, *Fiduciary Duty in Canada*, Carswell Looseleaf (2016 – Rel. 6), at p 2-7,

³⁶ *Blueberry River Indian Band v. Canada* (Department of Indian Affairs and Northern Development), [1995] 4 SCR 344, at para 53 (per McLachlin, J).

This reverse onus has been adopted by the Ontario Court of Appeal and identified as “clear authority” by the BC Court of Appeal.

In *The Toronto Party v. Toronto (City)*, 2013 ONCA 327 the court stated:

Where a beneficiary alleges a breach of fiduciary duty, the beneficiary need only establish prima facie inferences of fiduciary obligations and of their breach. The fiduciary concept then imposes a reverse onus that shifts the burden to the fiduciary to disprove the beneficiary's allegations.³⁷ [emphasis added]

In *Louie v. Louie*, a case dealing with a Band Councilor’s conflict of interest, the BC Court of Appeal stated:

there is clear authority to the effect that once a prima facie case of conflict of interest has been shown, the onus generally shifts to the defendant to show that he or she was acting in the best interests of the plaintiff (in this case, the Band.) See James I. Reynolds, *A Breach of Duty: Fiduciary Obligations and Aboriginal Peoples* at 196-7; *Toronto Party for a Better City v. Toronto (City)* 2013 ONCA 327 (CanLII) at para. 58; *Roberts v. Canada* [1995] F.C.J. No. 1202 at para. 492 (*aff’d* [1999] F.C.J. No. 1529, *aff’d* 2002 SCC 79 (CanLII)).³⁸ [emphasis added]

“*Prima facie*” means at first sight or from a first impression.³⁹

The fiduciary must provide a satisfactory explanation as to how they met their obligation. Courts have stated that the fiduciary may discharge its burden by establishing that no fiduciary obligation existed, or “accepting that a fiduciary obligation existed, but establishing that it was properly fulfilled or discharged.”⁴⁰ For example, the fiduciary may show they acted in the Band’s best interest⁴¹ provided “full disclosure [of the conflict or personal profit], and therefore fully informed consent”.⁴²

C. WWK POLICY

The WWK Operations Manual: Organizational Policies and Procedures has been in effect since at least September 27, 2012 (the “WWK Operations Manual”).⁴³ An excerpt of the WWK Operations Manual is at **Appendix E** of this Report.

³⁷ *The Toronto Party v Toronto (City)*, 2013 ONCA 327, at para 58.

³⁸ *Louie v. Louie*, 2015 BCCA 247, at para 21.

³⁹ Shorter Oxford English Dictionary 5th Ed, Vol. 2 (New York: Oxford Uni Press, 2002).

⁴⁰ *The Toronto Party v Toronto (City)*, 2013 ONCA 327 , at para 58.

⁴¹ *Lower Kootenay Indian Band v. Lower Kootenay Indian Band*, 2015 BCCA 247, at para. 21 (*obiter*).

⁴² *337965 BC Ltd. v. Tackama Forest Products Ltd.*, [1991] BCJ No 3141.

⁴³ WWK Operations Manual, Organizational Policies and Procedures (adopted September 27, 2012) (Appendix B, Document 9A, also see an excerpt at Appendix E) WWK Operations Manual, Organizational Policies and Procedures (ratified/adopted August 31, 2015) (Appendix B, Document 28).

1. Duties of Chief and Council

The WWK Operations Manual outlines the role of Council, providing that Council shall:

- Oversee the financial management and administration of the affairs of WWK;
- Act honestly, impartially, in good faith and in the best interests for all WWK members;
- Be accountable to WWK membership and conduct its business in an open and transparent manner;
- Adhere to WWK Policies and Procedures; and
- Act in accordance with the WWK Election Code.⁴⁴

WWK Operations Manual outlines the duties and responsibilities of the Chief, including:

- Acting as the Band's official spokesperson;
- Reporting to Council on the Chief's activities and to the Membership on the activities of Council; and
- Making decisions for the Band Council in times of emergency.⁴⁵

The duties and responsibilities of Councillors include:

- Overseeing and monitoring the administration of community services, including housing;
- Planning and budgeting for the funds and resources required for the WWK administration; and
- Ensuring the sound financial management of all WWK programs and services.⁴⁶

The WWK Operations Manual provides that Councillors work under a portfolio system, with Councillors assigned one or more portfolios in a field.⁴⁷ Councillors are to specialize in their portfolio area, including by studying the relevant background material, communicating regularly with Band members, and "advising Council regarding policy development, budgeting and decision-making in this area after consultation with the Band Manager and Band staff."

The Council Portfolio Role Description for 2013 provides that the role of portfolio holders is to:

- Hear from the community on matters in their portfolio;

⁴⁴ WWK Operations Manual, Section 2.5 - The Role of Council.

⁴⁵ WWK Operations Manual, Section 1.6 - Duties/Responsibilities of Chief.

⁴⁶ WWK Operations Manual, Section 2.7 – Duties/Responsibilities of Councillors.

⁴⁷ WWK Operations Manual, Section 2.8 – Councillor Portfolios.

- Support staff and inform the community about policy related to their portfolio;
- Supply strategic direction to Chief and Council on decisions related to their portfolio; and
- Champion the needs of the department(s) related to their portfolio.⁴⁸

2. Prohibitions Against Conflicts of Interest

The WWK Operations Manual contains policy regarding Conflict of Interest at s. 2.14, in accordance with the common law of fiduciary duty, providing that:

- Council members shall avoid a conflict of interest or the appearance of a conflict of interest;
- No Council member shall be involved in a transaction or matter where they are in a conflict of interest or appear to be in a conflict of interest; and
- Where a conflict of interest or appearance of a conflict of interest occurs, the following procedures apply:
 - The Council member shall disclose the nature and extent of the conflict at the Council meeting;
 - After declaring the conflict, the Council member shall not participate in the discussion or vote on the matter in question by leaving the meeting; and
 - Every declaration of a conflict of interest, and the nature thereof, shall be recorded in the minutes of the Council meeting. [Emphasis added].

3. WWK Code of Ethics and Contract/Oath of Office

The WWK Operations Manual also provides for a Code of Ethics, affected through the signing of the Code of Ethics and Contract of Office documents. The Code of Ethics also reflects the common law of fiduciary duty and provides that, amongst other things:

- No council member during his or her term of office shall directly or indirectly engage in any capacity similar to one that is carried on by Wei Wai Kum First Nation where a conflict is apparent (e.g. fund-raising; program/grant applications; representation or use of name or position).
- ...
- A council member shall not use his or her position for their own personal or business benefit or that of their immediate family.

⁴⁸ February 25, 2013, CRIB Staff Portfolios & Contacts and Council Portfolio Role Description (Appendix B, Document 11E).

- A council member shall not make use in any way of information obtained in the course of their duties for their personal or business benefit or that of their immediate family.⁴⁹

The Election Code requires elected Chief and Councillors take an oath of office swearing to:

- (a) uphold and comply with this Code, the Code of Ethics and all laws of the community;
- (b) fulfill the duties and responsibilities of his office under this Code, the Code of Ethics and all laws of the community;
- (c) carry out his duties faithfully, honestly, impartially and to the best of his abilities;
- ...
- (e) act always in the best interest of the community in carrying out his duties.⁵⁰

The WWK Chief & Council Contract of Office provides, amongst other things, that:

- If a Councillor’s elected position and private interests may constitute a conflict of interest it shall be directed to Chief and Council “who will direct in which manner this may be resolved”; and
- A Councillor “will not use information obtained as a result of [their...] elected position for personal gain”. [Emphasis added].

4. Removal from Office

The WWK Operations Manual provides that a Councillor may be removed from office on one or more grounds pursuant to s. 54 of the Election Code, including:

1. He/she has breached their oath of office.
2. He/she has violated these policies & procedures.⁵¹

Section 54 of the Election Code provides that:

The Chief or a Councillor may be removed from office if he:

- (a) violates this Code, his oath of office or the Code of Ethics;
- ...
- (c) fails to maintain a standard of conduct expected of a member of Council;

⁴⁹ WWK Operations Manual, S. 2.15 – Chief & Council Code of Conduct.

⁵⁰ WWK Election Code, s. 186.

⁵¹ WWK Operations Manual, s. 2.12 – Removal from Office of Council Members.

(d) accepts or offers a bribe, forges a Council document or otherwise acts dishonestly in his role;

(e) is negligent in failing to ensure the safety and protection of the community's members and property;

(f) uses his office for personal financial gain or the financial benefit of members of his family or friends to the detriment of the Council or the Band as a whole;

(g) abuses his office such that the conduct negatively affects the dignity and integrity of the community or of Council;

[...] or

(i) engages in such other conduct as may be determined by Council to be of such a serious nature that the removal is necessary and appropriate.

Sections 55 through 64 set out the procedure for removal from office based on any of the grounds set out in s. 54.

D. REMEDIES

1. Under Fiduciary Law

Where “a fiduciary takes advantage of a relationship of trust or confidence for her direct or indirect personal advantage” recovery based on the law of fiduciary duties is possible. A remedy for breach of fiduciary duty does not require proof of loss by the beneficiary.⁵²

If a breach of duty is found, the defaulting party may be required to account for the product of the breach. This stems from the prohibition against personal gain apart from what is authorized (as discussed above). As a result, if the fiduciary received an undisclosed and unauthorized benefit from the undisclosed relationship, “any such gain is not and never was lawfully in the hands of the faulting fiduciary as its beneficial owner [...]. The “gain” is therefore legally owned by the wronged party; the fiduciary merely “holds” the gain on the other’s behalf.”⁵³ As summarized by the BC Supreme Court in a case dealing with secret profits:

“Where there has been a breach of fiduciary duty [...] the law calls upon the defendants to account to the plaintiffs for any profit made or benefit received as a result of the breach of duty. This is not the same as paying damages, which are compensatory in nature.”⁵⁴

In *Silver v. Ned*, 2002 BCSC 944 Band Councillors who failed to obtain informed consent for a conflict of interest were found in breach of fiduciary duty. They were liable for an amount

⁵² *Baillie v. Charman* (1992), [1992] BCJ No 1726, 70 BCLR (2d), 94 DLR (4th) 403, at para 25.

⁵³ Ellis, *Fiduciary Duty in Canada*, Carswell Looseleaf (2016 – Rel. 6), at p 20-6.3.

⁵⁴ *MacMillan Bloedel Ltd. v Binstead* (1983), 22 BLR 255 (BCSC), at para 60.

equivalent to the net profits earned by the defendants to be determined through an accounting for the profits, interests, monies and income received.⁵⁵

Third parties that gained, with notice of the breach of duty, may also be liable to account for the unauthorized gain. This requires knowledge – or constructive knowledge – that the benefit was gained through a breach of fiduciary duty.⁵⁶ Actually assisting in the breach may also render the third party liable.⁵⁷ A third party, in this context, is a person having dealings with a fiduciary.⁵⁸

2. Under the WWK Election Code

The Election code, section 54 provides:

54. The Chief or a Councillor may be removed from office if he:

(a) Violates this code, his oath of office, or the code of ethics;

... (c) Fails to maintain a standard of conduct expected of a member of council;

....

Proceedings for removal from office may be initiated by either a WWK member or by Council.⁵⁹

Removal Proceedings by WWK Members

For a member to initiate removal proceedings a petition must be submitted to an Arbitrator that:

- (i) Identifies the s. 54 ground on which the removal is sought;
- (ii) Encloses evidence in support of the petition;
- (iii) Contains the elector's signature (to be called the "petitioner");
- (iv) Signatures of at least 25% of eligible electors of the Band; and
- (v) Includes a fee of \$100.⁶⁰

⁵⁵ *Silver v. Ned*, 2002 BCSC 944 at para 28; also see *Silver Bird et al v. Ned and Kelly*, 2003 BCSC 653 for the accounting of profits.

⁵⁶ Ellis, *Fiduciary Duty in Canada*, Carswell Looseleaf (2016 – Rel. 6), at p 20-18.4 to 20-18.5

⁵⁷ Ellis, *Fiduciary Duty in Canada*, Carswell Looseleaf (2016 – Rel. 6), at p 20-18.5, citing *Bank of Nova Scotia v. Bank of Montreal* (1982), 14 ETR 222 (Ont. HC).

⁵⁸ For example, a person or company with whom the fiduciary has an undisclosed business relationship.

⁵⁹ WWK Election Code, s. 55.

⁶⁰ WWK Election Code, s. 55(a)

Removal Proceedings by WWK Council

WWK Council may also initiate removal proceedings. The majority of Council must pass a BCR and submit a petition to the Arbitrator that identifies the ground pursuant to s. 54, evidence in support of the BCR and the signatures of all Council members who voted for the removal.⁶¹

Procedure

Appointment of an Independent Arbitrator

Once Council is requested to appoint, or becomes aware of the need for, an Arbitrator one must be appointed within five days.⁶² If Council fails to appoint an Arbitrator in five days the Band Manager must appoint one within four days of being requested by any individual.⁶³ If WWK Council and the WWK Band manager fail to appoint an Arbitrator an application can be made to court to appoint one.⁶⁴

Arbitration Procedure

On receipt of a petition from either a WWK member or WWK Council that Arbitrator has 10 days to determine whether the petition complies with the Election Code requirements and must notify the petitioner(s) if it does not comply.⁶⁵ If the petition complies with the requirements above the Arbitrator shall:

- (a) Determine if the grounds in the petition are frivolous and unsubstantiated, and dismiss the petition, or
- (b) Schedule a review hearing to take place within 20 days after the petition was submitted. Written notice of the hearing will be provided to Council, the petitioner(s) and the Council member who is the subject of the petition.⁶⁶

Within five days of the hearing the Arbitrator must issue his or her ruling.⁶⁷ If the Arbitrator rules that the petition stands and declare the Council position vacant, the Arbitrator may further rule that the Chief or Councillor who has been removed from office is disqualified from being a candidate in an election for up to 6 years.⁶⁸

⁶¹ WWK Election Code, s. 55(b).

⁶² WWK Election Code, s. 194.

⁶³ WWK Election Code, s. 195.

⁶⁴ WWK Election Code, s. 197.

⁶⁵ WWK Election Code, s. 56.

⁶⁶ WWK Election Code, s. 57.

⁶⁷ WWK Election Code, s. 62.

⁶⁸ WWK Election Code, s. 65.

PART VII - ALLEGATIONS REGARDING PAYMENTS TO JASON PRICE

A. ALLEGATIONS OF WRONGDOING AGAINST JASON PRICE

The Allegations of Wrongdoing may be stated generally:

Jason Price was paid by K&L Ltd. during 2014 and 2015, unknown to Band Councillors and members:

- These payments were made in return for Jason Price obtaining work for K&L Ltd. on Band construction projects or projects on WWK reserve land while Mr. Price was serving as Councillor and held the housing portfolio;
- The funds used by K&L Ltd. to pay Jason Price were obtained by overcharging or short changing construction contracts with the WWK band or WWK members; and
- Jason Price obtained labor and materials for construction on his own house at no cost. These were charged by K&L Ltd. to other “Band” projects.

B. UNDISPUTED FACTS

There is significant disagreement between those who assert Jason Price has been engaged in wrongful activity, and the position of Jason Price and his supporters. However, there are a number of significant facts on which there is no disagreement. These are set out below:

- During 2014-15 Jason Price was a Councillor with WWK.
- During 2013-15 Jason Price held the housing portfolio for the Council.
- During 2013-15, Jason Price was employed by the WWK as Lands, Housing and Public Works Administrator.
- Jason Price received payments in the amount of \$23,900 during 2014 and early 2015 for services provided to K&L Ltd, as follows:

Invoice No.	Date of Invoice	Invoice Amount	Invoice for:	Cheque Amount
110	19-Mar-14	\$6,200.00	Capacity Building	\$6,200.00
100	24-Mar-14	\$5,000.00	Consulting Services	\$5,000.00
110	19-Aug-14	\$4,500.00	Capacity Building on Job Project	\$4,500.00
156	13-Nov-14	\$2,000.00	Capacity Building on Job Project	\$2,000.00
157	11-Dec-14	\$5,000.00	Capacity Building on Job Projects	\$5,000.00
159	20-Mar-15	\$1,200.00	Capacity Building on Job Projects	\$1,200.00
TOTAL		\$23,900.00		\$23,900.00

Copies of Jason Price’s invoices and corresponding cheques from K&L Ltd. are at **Appendix F** of this Report.

- K&L Ltd. worked on numerous CMHC RRAP housing projects on WWK member houses in 2013 to 2014, which were administered by the WWK Lands, Housing and Public Works administrator, Jason Price.
- K&L Ltd. worked on the renovation and/or addition to Jason Price's house in 2013.
- K&L Ltd. was awarded a contract to renovate an existing WWK building as a Day Care Centre at a Council meeting on August 31, 2015.⁶⁹ Jason Price did not attend the August 31, 2015 meeting.
- The extent of Jason Price's involvement in the Day Care project is uncertain on the available evidence.⁷⁰ However, documentary evidence establishes that he was involved in the project on behalf of the WWK.⁷¹
- Prior to March 2016, the Chief, Councillors and Band Manager were unaware that Jason Price was working for and receiving payment from K&L Ltd. in 2014 – 2015.⁷²

C. ANALYSIS ON THE BASIS OF UNDISPUTED FACTS

The following analysis is based solely on the facts set out above, the general law of fiduciary duty and WWK policies. This analysis applies regardless of the nature of the services provided to K&L Ltd. by Jason Price, and regardless of whether Jason Price received any benefits from K&L Ltd. in the construction at his own home.

1. **On the basis of the undisputed facts, Jason Price was in breach of his fiduciary duty to the Band by accepting payments for services to K&L Ltd. in 2014 – 2015**

(a) *Fiduciary Duty*

The law of fiduciary duty is discussed in Part VI of this report and establishes that:

- As a Councillor, Mr. Price had fiduciary obligations to WWK.⁷³
- A fiduciary must always act with loyalty and the avoidance of any conflict of interest.⁷⁴
- Where fiduciaries put themselves in a position where their own interests or those of others may conflict with their duty to their principal, they will be required to disclose all

⁶⁹ August 13, 2015, WWK Meeting of Council (Minutes) (Appendix B, Document 26).

⁷⁰ Statements by Band Manager Angie Sarsons, Chief Robert Pollard, Band Member Coral Atkinson, and Linda Spooner are inconsistent.

⁷¹ For example, K&L Ltd. estimate November 13, 2015, and invoices January 15 and February 16, 2016, addressed to the attention of Jason Price. (Appendix B, Document 19).

⁷² The Band Manager, Chief Pollard, and interviewed Councillors were unaware of Jason Price's work for K&L Ltd. until March 2016 when the Allegations of Wrongdoing were first raised.

⁷³ Part VI of this Report, at pg 22, citing *Gilbert v. Abbey*, 1992 CanLII 921 (BC SC), [1992] 4 C.N.L.R. 21 (B.C.S.C.) at page 23.

⁷⁴ Part VI of this Report, at pg. 22 to 23.

material information regarding the transaction in order to obtain their principal's informed consent as to their acting despite the conflict.⁷⁵

- Unless first receiving consent, no one having duties of a fiduciary character to discharge shall be allowed to enter into engagements or assume functions in which he has or can have a personal interest conflicting or which possibly may conflict with the interests of those he is bound to protect. [emphasis added]⁷⁶

(b) Analysis and Conclusion

By entering a business relationship and accepting payment from a company (K&L Ltd.) which had business dealings with WWK, Jason Price was in a conflict of interest.

Jason Price failed to disclose his business relationship with K&L Ltd., and thus failed to disclose his conflict of interest and so was in breach of his duty as a Councillor.

This conclusion stands regardless of the nature of the services provided by Jason Price to K&L Ltd.

2. On the basis of the undisputed facts, Jason Price was in breach of policies of the WWK

(a) Policies

WWK policies relevant to the duties of a Councillor, in effect during the period 2014-16, are discussed in Part VI of this report, Law and Policy.

The Operations Manual in effect 2013-15 dealt with conflict of interest for members of council.⁷⁷ The manual provides, at section 2.14:

- Council members shall avoid a conflict of interest or the appearance of a conflict of interest.
- No Council member shall be involved in a transaction or matter where they are in a conflict of interest or appear to be in a conflict of interest.
- Procedures that are to be followed where a conflict of interest or appearance of a conflict of interest occurs:
 - The Council member shall disclose the nature and extent of the conflict at the Council meeting.

⁷⁵ Part VI of this Report, at pg. 22 to 24.

⁷⁶ Part VI of this Report, at pg. 23, see in particular Ellis, *Fiduciary Duty in Canada*, Carswell Looseleaf (2016 – Rel. 6) at p 1-6, 19-16 to 19-7.

⁷⁷ August 31, 2015, WWK Operations Manual: Organizational Policies and Procedures, Ratified/Adopted by Chief and Council (Appendix B, Document 28).

- After declaring the conflict, the Council member shall not participate in the discussion or vote on the matter in question by leaving the meeting.
- Every declaration of a conflict of interest, and the nature thereof, shall be recorded in the minutes of the Council meeting.

(b) *Analysis and Conclusion*

Jason Price was in breach of these policies in three ways:

- His work for K&L Ltd., a company which did significant business with the WWK, had at least the appearance of a conflict of interest;
- He was involved in transactions (his personal business dealings) with K&L Ltd., and did not obtain informed consent from the band council;
- Although he did not participate in the meeting of August 31, 2015, where a major contract was awarded to K&L Ltd., he failed to disclose his conflict.

The “Band Chief & Council Contract of Office” signed and agreed to by Jason Price February 19, 2009, provides at paragraph 14:

“If I am of the opinion that my elected position and private interests may constitute a conflict of interest, I shall declare this to the Chief and Council who will direct in which manner this may be resolved.”⁷⁸

Jason Price was obligated to disclose the conflict or what “may constitute a conflict”. Thus he was also in breach of his contract of office.

D. ANALYSIS – LACK OF CREDIBLE EXPLANATION

As explained above, in 2014-15, Jason Price was receiving payments from K&L Ltd., a company which was engaged in significant work on WWK housing projects. At this time, Jason Price was a Councillor and held the housing portfolio on Council. This relationship and receipt of money was a conflict not disclosed to Council or the Band Administration.

1. K&L Ltd. Files

The review of available K&L Ltd. files respecting projects on WWK Reserve failed to provide information respecting the \$23,900.00 payments to Jason Price. There were only two instances in the files where a payment was shown to be made to Jason Price, or could be inferred to relate to a payment to Jason Price.

The K&L Ltd. spreadsheet respecting the Lloyd Henderson project (discussed in Part VIII) shows a payment of \$4,500.00 to Jason Price. Invoice No. 157 from Jason Price to K&L Ltd. in

⁷⁸ February 19, 2009, Campbell River Indian Band Office, Band Chief & Council Contract of Office signed by J. Price (Appendix B, Document 11).

the amount of \$5,000.00, December 11, 2014, contains a handwritten notation which appears to allocate the \$5,000.00 to three housing projects, \$1,650.00 to 1440 Drake Road – Quocksister, and \$1,675.00 to two other projects. However, given my conclusion that the K&L Ltd. files cannot be relied on, due to the lack of completeness and lack of secure custody, they do not provide proof respecting the purpose of the payments.

2. WWK Files

There was nothing in the WWK files relating to payments to Jason Price. However, this is not surprising, given that his business relationship with K&L Ltd. had not been disclosed to the Band prior to the allegations of Linda Spooner in March 2016.

3. Obligation to Explain

However, given Mr. Price’s fiduciary duty to WWK, the lack of an explanation of the payment of \$23,900.00, does not resolve matters.

Where there is sufficient evidence to indicate that a breach of fiduciary duty has likely occurred, there is an onus on the person alleged to be in breach to provide a satisfactory explanation as to why they are not in breach. In the present case, Jason Price was in breach of his duties to WWK as a result of his undisclosed conflict of interest. Thus, there is an onus on him to provide a satisfactory explanation for his receipt of \$23,900.00 from K&L Ltd.⁷⁹

It is noteworthy that the invoices from Jason Price to K&L Ltd. provide virtually no information to establish an explanation for payment. One invoice in the amount of \$5,000.00 is for “consulting services” with no further information. The other five invoices are for “capacity building”, “capacity building on job project” or “capacity building on job projects”. References to capacity building provide some information about the services provided, as Kevin Spooner stated in a sworn Affidavit dated February 27, 2016, that he had paid Jason Price to find contracts which he identified as “capacity building”.⁸⁰ However, although these descriptions may establish that the invoices were rendered to K&L Ltd. for finding contracts, the descriptions provide no information respecting the nature of these contracts.

4. Investigation by Band Manager

Jason Price declined to be interviewed for the purpose of this investigation. However, he was interviewed by Band Manager Angie Sarsons in March 2016, at which time he made statements about the work done for K&L Ltd. Thus, I have reviewed Ms. Sarsons’ report to assess whether Mr. Price provided a credible explanation for his receipt of monies from K&L Ltd.

At the outset of Ms. Sarsons’ investigation, March 8, 2016, she wrote to Jason Price asking that he provide “detailed notes on the invoices that you submitted to K&L Spooner Construction (“K&L”) describing and demonstrating the nature of the services provided to K&L”. It appears that the only response provided by Mr. Price to this request was to advise that his computer hard

⁷⁹ *Louie v. Louie*, 2015 BCCA 247, at para. 21. See Part VI, Section B of this Report.

⁸⁰ Affidavit sworn by Kevin Spooner, dated February 27, 2016 (Appendix B, Document 32).

drive had failed (a matter which was substantiated) and to provide vague generalities about work done for K&L Ltd. He provided no specific information regarding any of the invoices nor as to the exact nature of the services he provided. In my view, the loss of computer information is not a sufficient excuse for failing to provide information which would permit an objective person to understand how Mr. Price had earned the \$23,900.00. It is my view that he has failed in his obligation to explain his receipt of this significant sum of money obtained from a company with whom he had an undisclosed business relationship.

5. Evidence of Kevin Spooner

Ms. Sarsons also accepted vague statements from K&L Ltd. principal Kevin Spooner, which corroborated Mr. Price's account of his work for K&L Ltd. However, Mr. Spooner's statements were lacking in detail. Additionally, when contacted and interviewed for this investigation, Mr. Spooner was uncooperative, failed to answer questions and provided only vague generalities in response to other questions. In particular, he was unwilling or unable to provide any details respecting the work Jason Price had done for K&L Ltd. in the period 2013-2015.

6. Conclusion on Explanation

I conclude that no credible explanation has been provided to date for Jason Price's receipt of \$23,900.00 from K&L Ltd.

E. SUMMARY OF CONCLUSIONS – UNDISCLOSED CONFLICT AND PAYMENTS BY K&L LTD.

1. Undisclosed Conflict of Interest

By entering a business relationship and accepting payment from K&L Ltd., undisclosed to WWK, Jason Price was in a conflict of interest and in breach of his duty as a Councillor at common law.

For the same reasons, Jason Price was in breach of WWK policies, in particular, section 2.14 of the Operations Manual and his Contract of Office.

2. Receipt of Payments

By receiving payments from K&L Ltd., which were undisclosed to WWK, and for which he has provided no satisfactory explanation, Jason Price is in further breach of his duty as a Councillor at common law.

PART VIII - ALLEGATIONS REGARDING CONSTRUCTION PROJECTS

Linda Spooner has made allegations respecting a number of RRAP Housing Projects on WWK reserve lands, the Day Care project, the Thunderbird Hall renovation, and Jason Price's own house renovation, collectively referred to as the Allegations of Wrongdoing.

The Allegations of Wrongdoing allege that Jason Price improperly benefitted from construction contracts undertaken by K&L Ltd. by obtaining labour and materials for his own house for which he did not pay, had work on his house paid for by other band or band member projects, and received money in return for obtaining work and accommodating overcharging by K&L Ltd.⁸¹

To assess these allegations, I have reviewed both the K&L Ltd. files provided by Linda Spooner and the Band files for these projects. Both sets of files have significant limitations, as discussed below. I have also sought information through interviews of people who purport to have knowledge of the various projects.

A. K&L LTD. FILES

Linda Spooner provided files for five RRAP housing projects: Lloyd Henderson; Christine Roberts; Maggie Henderson; Quocksister; and Ollie Henderson. She also provided files respecting Jason Price's home renovation, the Day Care project and the Thunderbird Hall renovation.

In her December, 2017, interview, and in correspondence, Ms. Spooner stated that she has not received all of the K&L Ltd. files from her former husband, so there is a potential that some, or all of the files which have been provided are incomplete and that there are additional files that Mr. Price oversaw.

The material in each file is contained in a file folder and consists of a variety of documents and copies of documents, including: K&L Ltd. invoices; invoices from material suppliers; timesheets for labour; accounting spreadsheets; notes, etc.

There are several ways that the evidentiary value of the K&L Ltd. files is limited:

- On careful review, the files appear to be incomplete.
- With some exceptions, it is not possible to independently establish whether documents in a particular file belong there.
- Unless a corresponding document has been located in Band files, it is not possible to know whether estimates, invoices, or supporting materials have been delivered to the Band. The exception to this is where the Spooner file shows evidence of payment of invoices by the Band.
- Handwritten notes are generally not signed, nor is there any identification of the author.
- In many cases the accounting records are only a partial accounting for labour and materials, so that it is not possible to account for the full amounts charged by K&L Ltd. for the projects.

⁸¹ Issues respecting the payment of \$23,900.00 by K&L Ltd. to Jason Price in 2014 and 2015 are discussed in Part VII of this report.

- The files have been handled by unknown persons prior to being delivered for review in this investigation.

As a result of these deficiencies, in most cases, the basic requirement for evidence, that it be reliable, has not been met.

Nevertheless, the documents in the Spooner files have been reviewed carefully and correlated with documents provided by the Band Administration and Woodward & Company LLP. This analysis has enabled use of the documents to draw some conclusions.

In other cases, the files have been sufficiently complete, and the relationship among documents has been sufficiently clear, that some conclusions can be drawn.

B. WWK BAND FILES

Band Manager Sarsons confirmed that she had provided all documents that she was able to locate regarding the RRAP files⁸², which included files for the following addresses

- Christine Roberts – 1714 Roberts Crescent;
- Maggie Henderson – 1439 Weiwaikum Road;
- Ollie Henderson – 1720 Captain John Crescent;
- Quocksister – 1440 Drake Road;
- Thompson – 1675-1424 Cliff Crescent;
- McKays – 1675-1445 Drake Road;
- Lloyd Henderson – 1740 Captain John Crescent; and
- 685 Loughborough Drive, home of Jason Price (non CMHC funded work).

As with the K&L Ltd. files, there are numerous ways that the evidentiary value of these files is limited. In particular, all of the files appear to be incomplete and some contain virtually no information.

C. JASON PRICE HOUSE – 685 LOUGHBOROUGH ROAD

Jason Price had K&L Ltd. work on his own house in 2013. An invoice was rendered to Jason Price dated January 29, 2014, in the amount of \$12,172.76, for labour and materials.⁸³

⁸² Email Angie Sarsons to Emma Hume, January 15, 2018, February 28, 2018

⁸³ Spooner File re: Jason Price – Personal Home Renovations Year 2013 (Appendix B, File 005).

1. Linda Spooner Allegations

Linda Spooner alleges:

- Labour was diverted from other projects on reserve to Jason Price's house renovation, so that he did not pay for it (the labour was charged to other projects).
- Materials were diverted from other projects on reserve to Jason Price's house so that he did not pay for them (the materials were charged to other projects).
- That Jason Price did not pay the January 29, 2014 invoice in the amount of \$12,172, but rather that amount was recovered by K&L Ltd. overcharging on other Band projects, diverting the money charged on these projects to pay the Jason Price bill.
- The January 2014 invoice in the amount of \$12,172.76 was the only invoice issued by K&L Ltd. respecting work on Jason Price's house but that invoice does not account for all work done by K&L Ltd. on Mr. Price's house.

2. K&L Ltd. File⁸⁴

The contents of the K&L Ltd. file for Mr. Price's renovation are as follows:

The file contains an invoice from K&L Ltd. to Jason Price in the amount of \$12,172.76, marked "paid" in handwriting.⁸⁵

The file contains a spreadsheet itemizing the labour and materials supplied, which corresponds to the invoice.

The file contains copies of 16 timesheets, prepared by K&L Ltd. employees, which show their time spent on various K&L Ltd. jobs. Each of the timesheets in the file shows some time spent on Jason Price's house.

The file contains photocopies of 11 invoices for building materials.

(a) *Spreadsheet*

The amounts shown on the spreadsheet correspond to the January invoice, in the amount of \$12,172.76.

(b) *Labour Charges*

The time entries on the timesheets correspond to the spreadsheet, with three exceptions. The exceptions are:

⁸⁴ All documents referenced in this section are contained within Appendix B, File 005, Spooner File re: Jason Price – Personal Home Renovations Year 2013.

⁸⁵ Spooner File re: Jason Price – Personal Home Renovations Year 2013 (Appendix B, File 005, pg. 6) a copy is also attached as Appendix G to this Report.

- two timesheets, Connor Hanna and Tony Sozio, 4.5 hours each on November 28, for framing and installing a “little door”, showing the job as Jason’s house.
- one timesheet for the week ending September 5, 2013 by Lorentz Maurer, showing seven hours for “kitchen demo for Jason Price”.
- one hour of work by Chris Jay in September 20 to October 3, 2013 time period included on the spreadsheet (timesheet shows 33 hours at Jason’s house, spreadsheet shows only 32).

None of this time shows up on the spreadsheet and thus is not included in the invoice.

However, a closer examination of the two timesheets showing work done on November 28 establishes that this work was done in 2014 and not 2013, and thus could not have been included in the January 2014 invoice. The Tony Sozio timesheet shows the date as “Friday 28” – November 28 was a Friday in 2014, but not in 2013. Similarly, the Connor Hanna timesheet shows two weeks of dates worked which correspond to Monday to Friday in 2014. Those same dates in 2013 would have involved working Sunday to Thursday and not Friday and Saturday. The fact of these timesheets being placed in the file, intermingled with the timesheets which correspond to the spreadsheet and invoice, casts serious doubt on the reliability of this, and perhaps other files.

The 7 hours by Lorentz Maurer for “kitchen demo for Jason Price” appears to have been billed to Maggie Henderson’s project. However, it appears likely that the work done was actually at the Henderson project, not Jason Price’s house. The Henderson project did include a kitchen renovation, which would follow the “demo”. On the other hand, the labour timesheets for Jason Price’s project did not include any kitchen work.

The 1 hour discrepancy in the billing of work by Chris Jay is most likely a clerical error.

(c) *Material Invoices*

The file contains photocopies of 11 invoices for building materials. The spreadsheet, on which the January 2014 invoice is based, contains 12 entries. The copies of the invoices and the spreadsheet are fully consistent, with the exception of an entry on the spreadsheet in the amount of \$23.99, for which there is no corresponding invoice.

3. Conclusion on Labour and Materials – 2013 Work

On the basis of the file material, it appears that Jason Price was billed appropriately for the material and labour supplied for his renovation. With respect to the materials, he was either overcharged \$28 or an invoice has been misplaced. With respect to the labour, the one hour discrepancy in the amount of time billed for Chris Jay, in the amount of \$45.00, is insignificant and most likely a bookkeeping error. The likely explanation for the reference to Jason Price on Lorentz Maurer’s timesheet is that Jason Price was the project manager for the Maggie Henderson renovation.

4. Band File

Given that this renovation was not a Band project, the WWK administration did not have a file. However, Band Manager Angie Sarsons did provide a copy of the January 29 invoice from K&L Ltd. to Jason Price, which included several handwritten notes. It may be inferred that Ms. Sarsons obtained this invoice from Linda Spooner in March 2016, when she was conducting her investigation. There are 3 handwritten notes on the copy of the invoice. The first appears to be a note by Linda Spooner asserting that “never received payment from Jason... this amount was deducted from other jobs on reserve”. The other two notes are Ms. Sarsons’, the first, having an arrow towards the Linda Spooner note, stating “because Jason paid in cash for the labour as he already had the materials”. The second note by Ms. Sarsons stated “Jason stated he has never seen this invoice.”

The note from Ms. Spooner is simply a statement of her allegation, and proves nothing.

The notes by Ms. Sarsons, presumably made following her discussion with Jason Price in the course of her investigation, raise questions. First, if Jason Price had never seen the invoice, how could he assert that he had paid cash for the work? Second, if Jason Price already had the materials, why were materials included in the invoice in an amount over \$3,000.00?

5. Claim that Jason Price did not pay the January 29 Invoice

Linda Spooner alleges that the January 29, 2014 invoice was not paid by Jason Price, but rather the amount was recovered from the diversion of funds from other on-reserve projects. In support of this allegation, Ms. Spooner has provided a photocopy of the file folder for Jason Price’s home. The file folder is covered with notes, some of which correspond to the hours which are accounted for on the spreadsheet, and thus the invoice. The folder also has handwritten notes and calculations, which, according to Ms. Spooner, establish that the full invoice amount of \$12,172.76 was accounted for by diverting money received for other projects.

There is no indication on the file folder as to who made the notes and calculations, nor is it clear that the notes establish that money has been diverted from other projects. Thus, the file folder notations have little value as evidence, and do not establish that money was diverted from other projects.

6. Claim that Jason Price paid cash

There is no documentary evidence that Jason Price paid the \$12,172.76 invoice for K&L Ltd.’s renovations on his home.

When interviewed by Band Manager Sarsons in March 2016, Jason Price asserted that he had paid for the work in cash, and that he had obtained this cash as an inheritance.

The simple assertion by Mr. Price that he paid cash for his home renovation would be the end of this matter, except that he was a fiduciary as a result of his position as Councillor, and had an undisclosed conflict of interest in his business relationship with K&L Ltd. In these circumstances, there is an onus on Jason Price to explain how he discharged his duties. Given

his undisclosed conflict of interest dealing with K&L Ltd., he has an obligation to establish that he paid for the work and materials obtained through K&L Ltd.

7. 2014 Work

Invoices and timesheets for labour and materials relating to the installation of stairs at Jason Price's house in October 2014 were located in the K&L Ltd. file for the Lloyd Henderson project, which is discussed below.

As noted above, timesheets located in the K&L Ltd. file for Jason Price's house renovation included timesheets for November 2014, for framing and installing a "little door", 4.5 hours each for two workers.

No invoice has been located in respect of the October and November 2014 work on Jason Price's house by K&L Ltd. Linda Spooner advised that K&L Ltd. had not issued any invoice respecting work on Jason Price's house after January 2014, however, given the incomplete state of the K&L Ltd. files, and the fact that Linda Spooner was not fully engaged in all of the activities of K&L Ltd., it is not possible to conclude that no invoice was issued. On the other hand, Jason Price, as a fiduciary with an disclosed conflict of interest relating to K&L Ltd., has an onus to explain that he paid for the work, and show that he did not receive a benefit from K&L Ltd.

D. OLLIE HENDERSON – 1720 CAPTAIN JOHN CRESCENT

1. Linda Spooner Allegations

Linda Spooner alleges:

- A \$900.00 invoice dated July 5, 2013, from True Line Fencing was charged to Ollie Henderson's project, but installed at Jason Price's house.
- Labour in the amount of 124.5 hours was charged for the work on Ollie's roof, but some of this labour was for work on Jason Price's house.

2. K&L Ltd. File

The Spooner file contains:

- Invoice from K&L Ltd. to the attention of Jason Price dated August 27, 2013, in the amount of \$27,388.00.
- Invoice from K&L Ltd. to the attention of Jason Price, dated February 25, 2014, in the amount of \$2,149.91.
- Photocopies of 37 invoices for materials, including a bill from True Line Fencing, dated July 5, 2013, in the amount of \$900.00, showing delivery address "Jason 685 Loughborough Road". (A copy of this invoice is attached at **Appendix H** of this Report.)
- Timesheets for Labour in June/July 2013.

- CHMC estimate dated May 23, 2013, showing a RRAP loan approval for a total of \$16,000.00.
- Accounting calculation shown on file folder “1720 Captain John Crescent” (Ollie’s house).⁸⁶

The handwritten calculations on the file folder involve an addition of material bills, the addition of a 15% surcharge on materials and the total for the labour. The total amount is \$26,388.00. There is no apparent explanation why the invoice is \$27,388.00, an additional \$1,000.00, which appears to be another example of overcharging by K&L Ltd.

Each of the entries on the file folder is supported by one of the invoices from suppliers. The \$900.00 invoice for fencing is included in the accounting on the file folder, and thus in the invoice. There are 10 invoices (of which two are credits) which are not included on the file folder calculation, however, taking the credits into account the amount omitted from the calculation is only slightly over \$100.00.

3. Band File

There is very little information in file materials supplied by the Band administration respecting the Ollie Henderson RRAP Project. The file provided includes:

- Angie Sarsons’ notes of her interview with Jason Price. Ms. Sarsons notes include: “Ollie was supposed to get a gate but he didn’t. A gate was never on the RRAP application or on his invoice from K&L Spooner.” Ms. Sarsons notes that Jason Price stated: “I paid cash for the gate. Gate is installed at my home.”
- RRAP Loan Approval in the amount of \$16,000.00.
- RRAP Work Description, total amount \$16,000.00, signed by Kevin Spooner.
- Certificate dated June 30, 2014, that work at 1720 Captain John Crescent was completed in compliance with the BC Building Code.⁸⁷

The file is obviously incomplete. There are no invoices, estimates or other documents which would normally be in a renovation file.

4. Conclusion on Fencing

It is noteworthy that the calculations handwritten on the file folder, the amount of which are substantiated precisely by the receipts and time entries, add up (including the 15% charge on materials) to precisely \$26,388.00, while the invoice amount is \$27,388.00.

⁸⁶ Spooner File Re: Ollie Henderson Year 2013-14 (Appendix B, File 008).

⁸⁷ Band File re: Ollie Henderson 2013(Appendix B, File 003).

In my view it would be extremely difficult to fabricate this calculation, so it may be concluded that Ollie's project did pay for the fencing in the amount of \$900.00. However, Ollie did not have a fence⁸⁸, so it is reasonable to conclude, on the basis of the delivery address shown on the invoice, that the fence is installed at 685 Loughborough Road, home of Jason Price⁸⁹. Thus, the question is whether Jason Price or K&L Ltd. benefitted from the inclusion of the invoice in the Ollie Henderson bill.

It is noteworthy that the True Line Fencing bill in the amount of \$900.00 (attached as **Appendix H** to this Report) indicated on its face that the material and labour was for Jason Price, at his home address, but was charged to K&L Ltd. Ollie had no fence and Jason Price acknowledged to Band Manager Sarsons that the fence was installed at Jason Price's house.

Thus, it is possible that Jason Price received a fence and gate without payment, the labour and materials having been charged to the Ollie project. However, it is also possible that Jason Price paid K&L Ltd. for the fence and gate, and that K&L Ltd. nevertheless charged Ollie's project, with the result that K&L Ltd. was paid twice.

Jason Price advised Band Manager Sarsons that he paid cash for the gate. However, if he paid cash to the supplier, the supplier would have given the invoice to him, and there is no reason that the invoice would have ended up in the hands of K&L Ltd. On the other hand, it is possible the gate was ordered through K&L Ltd. and Mr. Price paid K&L Ltd. Given Jason Price's position as a fiduciary, and his undisclosed conflict in dealings with K&L Ltd., he owes WWK an explanation.

5. Conclusion on Roofing Labour

There is nothing in the K&L Ltd. file to indicate that any of the 124 hours charged to Ollie's file was work done on Jason Price's house. All of the employee timesheets included in the file refer to the work being at Ollie's. Further, the work charged respecting Ollie's project was undertaken in June and July 2013, while according to the Jason Price house file, work on his house commenced in August 2013.

6. Conclusion on Overcharging

It appears that K&L Ltd. overcharged \$1,000.00 for work done at Ollie Henderson's house. However, there is no evidence that Jason Price was involved, or had knowledge of the overcharging.

E. QUOCKSISTER – 1444 DRAKE ROAD

1. Linda Spooner Allegations

Linda Spooner alleges that the labour for the framing and installing of a "little door" on Jason's house was charged to the Quocksister project. This allegation is supported by:

⁸⁸ As pointed out by Angie Sarsons when interviewed on December 5, 2017, and her notes referred to above.

⁸⁹ This conclusion is corroborated by Ms. Sarsons' notes, referred to above.

- Timesheets for Connor Hanna and Tony S. which identify 4.5 hours each for work at Jason’s house. These hours are included in the labour summary for the Quocksister project.
- Invoice No. 28 in the amount of \$16,081.68 relating to the Quocksister job includes a breakdown, the first item of which is to “frame/install little door”.
- The December 11 invoice from Jason Price to K&L Ltd. in the amount of \$5,000.00 for “capacity building” included a handwritten note which says “1,650.00 – 1440 Drake Road – Quocksister”.

2. K&L Ltd. File

The Spooner file includes⁹⁰:

- spreadsheet itemizing labour charges;
- spreadsheet from material suppliers, amounts and 15% markup, which includes an entry for Jason Price in the amount of \$1,650.00, marked up to \$1,897.50;
- photocopies of material bills;
- invoice to the attention of Jason Price, No. 25, dated December 9, 2014, Progress Draw, \$11,725.00;
- final invoice to the attention of Jason Price, dated March 20, 2015, \$16,575.00;
- invoice to the attention of Jason Price, dated March 19, 2015, in the amount of \$16,081.68, after deduction of Progress Draw (attached as **Appendix I**). Unlike most K&L Ltd. invoices to WWK this invoice includes a listing of the various tasks completed, including “frame/install little door”, as well as a breakdown of the charges for labour (\$9,952.50) and the material (\$17,854.18) and a Progress Draw in the amount of \$11,725.00; and
- invoice from Jason Price to K&L Ltd. for capacity building, December 11, 2014, in the amount of \$5,000.00, with handwritten notes.

3. Band File

Very little material has been provided from Band files respecting this project.⁹¹ Material that has been provided is:

⁹⁰ Spooner File re: Quocksister Year 2014-15 (Appendix B, File 009).

⁹¹ All documents provided by WWK regarding the Quocksister RRAP project can be found at Appendix B, File 015; Also see: March 20, 2015, K&L Spooner Construction Ltd. Invoice 25B for \$16,575.00 (Appendix B, Document 25).

- CMHC loan details for Quocksister 1444 Drake Road in the amount of \$16,000.00, RRAP invitation to bid showing grand total of \$23,450.00, contractor Kevin Spooner;
- invoice, Progress Draw December 9, 2014, \$11,725.00 (a copy is attached at **Appendix I** of this Report); and
- final invoice March 20, 2015, \$16,575.00. Unlike the March 19, 2015 invoice in the K&L Ltd. file, this invoice does not include a listing of tasks or a breakdown of labour and materials.

4. Conclusion on “Little Door”

Ms. Spooner’s allegation is supported by the total labour shown on the spreadsheet, \$9,862.50, being shown on the invoice in the amount of \$16,081.68 dated March 19, 2015, located in the K&L Ltd. file. However, it appears that the actual final invoice sent to the Band was dated March 20, 2015, in the amount of \$16,575.00, and that the March 19 invoice was never sent. Thus, there is no certainty there were not changes in the accounting procedure between the March 19 and March 20 invoices.

Nevertheless it is possible that the nine hours of labour at Jason Price’s house was taken into account in the Quocksister bill. Whether this was done deliberately to assist Jason Price, was a “double charge” by K&L Ltd., or was a bookkeeping error cannot be determined from the file material. This question would be clarified in Jason Price’s favour if he is able to establish that he paid for the “little door” installation.

5. Conclusion on Overcharging

It is also apparent from the file that the final bill was increased by approximately \$500.00 (\$16,081.00 to \$16,575.00) over the actual labour and material costs. However, there is no evidence that Jason Price was involved or had knowledge of the overcharging.

6. Conclusion on December 11, 2014 Invoice from Jason Price

Ms. Spooner also claims that the \$1,650.00 paid to Jason Price for “capacity building” pursuant to his invoice of December 11, 2014, was charged to the Quocksister project. However, the material in the file which purports to make that connection cannot be relied on. There is no indication of who made the handwritten notes on the Jason Price invoice. Nor is the spreadsheet showing \$1,650.00 payable to Jason Price conclusive of anything, as neither its purpose nor its author are known, and it does not correspond with the invoices in either the K&L Ltd. file or the Band file.

F. CHRISTINE ROBERTS – 1714 ROBERTS CRESCENT

1. Linda Spooner Allegation

Linda Spooner alleges that K&L Ltd. charged \$14,900.00 to the Band for re-roofing Christine Robert’s house in 2013. She states that the actual work was done by a sub trade, Nelson Roofing and Sheet Metal Ltd., for \$7,332.96. Thus, K&L Ltd. took a markup of over 100%, rather than

the usual 15%. She further alleges that a portion of this overcharge was applied to pay a portion of the invoice from K&L Ltd. to Jason Price for his personal home renovation.

2. K&L Ltd. File

The file material provided by Linda Spooner includes:

- Estimates from Nelson Roofing and Sheet Metal Ltd. addressed to K&L Ltd., and an invoice to K&L Ltd. dated November 13, 2013, in the amount of \$7,332.96 re labour and material for the installation of the new roof at 1714 Roberts Crescent (Christine Roberts's house).
- Estimate, dated October 7, 2013, addressed to WWK Attention Jason Price from K&L Ltd. for new roof total estimate \$14,900.00.
- K&L Ltd. invoice addressed to WWK Attention Jason Price October 30, 2013, for replacement of roof, in the same terms as the October 7, 2013 estimate, in the amount of \$14,900.00.
- Cheque stub, Campbell River Indian Band, in the amount of \$14,900.00, November 4, 2013.⁹²

3. Band File

The Band file contains a copy of the same invoice, October 30, 2013 to the band, attention Jason Price, in the amount of \$14,900.00.⁹³ It does not contain any information about the work being done by the sub trade, nor the cost and markup, nor estimates for the work.

A note in the file, prepared by Band Manager Angie Sarsons, dated July/August 2017, notes:

- the allegation of overcharging for the Christine Roberts roof was “not part of Angie’s initial investigation – came out later”;
- this was not an RRAP project, as her RRAP was not approved;
- the roof project was paid as part of the Elders Emergency fund;
- K&L Spooner was hired by former Band Manager Ken Cooper to do the job; and
- Jason was not part of the job – dealt with Ken directly.

⁹² Spooner File re: Christine Roberts Year 2013 (Appendix B, File 003).

⁹³ Band File re: Christine Roberts 2013(Appendix B, File 001).

4. Conclusion on Overcharging

It appears clear from the file material that K&L Ltd. overcharged this project by using a markup of over 100% on the sub trade invoice, an amount in excess of \$7,000.00.

However, there is no evidence that Jason Price was aware of the overcharging, since it was Ken Cooper's decision and there is no reference to the sub trade bill in the file.

5. Conclusion on Jason Price Benefit

There is no evidence that the overcharging by K&L Ltd. was diverted to Jason Price, to pay his invoice nor to pay for his home renovation.

G. LLOYD HENDERSON – 1740 CAPTAIN JOHN CRESCENT

1. Linda Spooner Allegations

Linda Spooner alleges misappropriation of both labour and materials from this project, and payment to Jason Price for "capacity building" related to the project on the basis that:

- Lenz Welding invoice, October 9, 2014, in the amount of \$2,360.00 "to fabricate two aluminum stair runners for Mr. Price" was charged to the Lloyd Henderson project. Additionally, an invoice from Kinetic Powder Coating Ltd. dated October 3, 2014, in the amount of \$598.50 was for powder coat of those stringers.
- Jason Price submitted invoice No. 110 to K&L Ltd. for "capacity building" in the amount of \$4,500.00, dated August 19, 2014, the same date on which K&L Ltd. invoiced the Band for a progress payment on the Lloyd Henderson project. This amount was charged to the project.
- Scaffolding was charged to the Lloyd Henderson project, but was not used there, as the project did not require scaffolding, instead, the scaffolding was used at Jason Price's house.
- Forty-three hours of labour for installation of the stair stringers and scaffolding at Jason Price's house were charged to the Lloyd Henderson project, in the amount of \$1,835.00.

2. K&L Ltd. File

The file provided by Ms. Spooner includes:

- a spreadsheet showing labour charges for the project, together with copies of the timesheets on which the charges are based;
- a spreadsheet of material costs showing 15% markup and total, together with copies of material bills;

- two invoices from K&L Ltd. to the Band, attention to Jason Price. Progress draw August 19, 2014 in the amount of \$14,500.00 and final invoice November 14, 2014 in the amount of \$13,627.00 (total \$28,127.00);
- invoice from Jason Price to K&L Ltd. August 19, 2014 “for capacity building on job project” in the amount of \$4,500.00. Handwritten notations on copy of invoice “Captain John Crescent” and “#2705”.⁹⁴

3. Band File

The documents provided by WWK Band Administration did not include any file material respecting the Lloyd Henderson RRAP project. In response to our further inquiry with Band Manager Angie Sarsons, she replied that she did not have further access to RRAP files and did not have additional documents associated with the Lloyd Henderson file.⁹⁵

4. Analysis

The total of the materials and labour, as shown on the K&L Ltd. spreadsheets comes to \$30,627.67. However, the total invoiced to the Band was \$28,127.00, a difference of \$2,500.00. There is nothing in the file material to suggest why that would be. There is no individual amount of \$2,500.00 in either spreadsheet which could explain the discrepancy. Nevertheless, the fact that the labour and materials total and the final invoice both contain a total amount ending in \$27.00, and that the difference between the two is a round number of \$2,500.00, it is reasonable to assume that these documents underlie the invoice to the Band. Thus, I have concluded that the material and labour invoices in the file were charged to the Henderson RRAP project.

The K&L Ltd. timesheets supporting the labour charges are incomplete. However, there are copies of timesheets to cover each of the labour charges which Ms. Spooner contends to be inappropriate. Several of the timesheets have entries for the Captain John Crescent job which make reference to Jason Price.

- Connor Hannah:
 - September 9, Captain John Crescent (Jason) – setup scaffold/remove railing/dry fit stringer
 - September 10, Captain John Crescent (Jason) – add trim to landing, caulk, paint re-side
 - October 3, Captain John Crescent (Jasons) – pick up stringers, mount them
 - October 6, Captain John Crescent (Jasons) – router/cut and stain treads
 - October 8, Captain John Crescent (Jasons) – fasten treads to stringers
- Brent Berry:

⁹⁴ Spooner File Re: Lloyd Henderson Year 2014 (Appendix B, File 006).

⁹⁵ Email January 15, 2018, A. Sarsons to E. Hume.

- October 3, Jason Price – mount stairs/dismantle scaffold
 - Danny Spooner:
 - October 3, Jason Price – stairs/dismantle scaffold

The material bills supporting the spreadsheet for material charges are incomplete. There are numerous entries from Home Hardware, Home Depot, and Windsor Plywood, which do not have corresponding invoices. There are 3 copies of invoices in the file which do not have corresponding entries on the spreadsheet.

The \$4,500.00 invoice from Jason Price (invoice No. 110, August 19, 2014, for “capacity building”) is listed on the spreadsheet. On the copy provided, this amount appears to be crossed out, but the total shown on the spreadsheet includes the \$4,500.00. The \$4,500.00 is shown on the spreadsheet to be marked up by 15% for total charge of \$5,175.00.

5. Conclusions

(a) *Stairs*

The timesheets and invoices, together with the spreadsheets are convincing evidence that the materials and labour for installation of stairs for Jason Price was charged by K&L Ltd. to the Lloyd Henderson project:

- The timesheets, which are handwritten by the individuals working for K&L Ltd. provide strong evidence that some of their work, totaling \$1,835.00, involved installing stairs for Jason Price. (Time sheets are attached at **Appendix K** of this Report).
- The invoice for the aluminum stair runners, in the amount of \$2,360.00 indicates they were “for Mr. Price”. An invoice in the amount of \$598.50 was for coating for these stair runners. (Both invoices are attached at **Appendix K** of this Report).

Thus, there is evidence that in obtaining the stairs, Jason Price obtained a benefit having a value of approximately \$4,700.00, paid for by the Lloyd Henderson RRAP project.

(b) *Capacity Building Invoice*

The invoice from Jason Price to K&L Ltd. in the amount of \$4,500.00 for capacity building includes a handwritten note “Captain John Crescent”. That the invoice for the \$4,500.00 is included on the spreadsheet of material and sub-contractor charges, which made up the final bill for this project, provides evidence that Jason Price benefitted in the amount of \$4,500.00 from charges made to the Band/CMHC on this project.

The only other explanation is that K&L Ltd. charged the Lloyd Henderson project the \$4,500.00 payment to Jason Price, for services rendered elsewhere, unbeknownst to Jason Price.

(c) ***K&L Ltd. File***

There is nothing on the K&L Ltd. file to indicate why, or if, the final bill to WWK was \$2,500.00 less than the total labour and materials shown in the file. However, given the incomplete files and the lack of band files on this project, no conclusion may be drawn.

(d) ***Absence of Band File***

It is concerning that there is no band file respecting this controversial matter.

H. MARGARET HENDERSON

1. Linda Spooner Allegations

Linda Spooner claims that material and labour billed to Maggie Henderson's project was used at Jason Price's home.

Ms. Spooner alleges two instances of material diversion:

- Aluminum railing – an invoice dated August 31, 2013, shows a charge of \$1,473.00 for the supply and installation of a railing. The job is identified as “Spooner construction, 685 Loughborough Drive”, which is Jason Price's home address.
- An invoice from Upland Ready-mix dated August 6, 2013 in the amount of \$353.00 for delivery of 2 cubic meters of concrete to “the end of Loughborough Drive” (Jason Price's house is located at the end of Loughborough Drive, but that is a cul-de-sac and there are other houses and a park which could also be considered to be at the end of it).

In respect to her allegation of diversion of labour, Ms. Spooner states:

- Fifty-six hours were billed for a deck at Maggie's home, however, there was no deck installed.
- A timesheet of a K&L Ltd. employee shows 7 hours for “kitchen demo” identifying the job as “Jason Price”, which was billed to the Maggie Henderson project.

2. Maggie Henderson Allegation

In a letter dated September 21, 2016, Maggie Henderson states:

- Many items which were included in her CMHC RRAP Approval were not completed.
- She was asked by Jason Price to take out a \$9,000.00 loan from the Band to have the work completed.
- She has been unable to get information from the Band respecting these deficiencies.

3. K&L Ltd. File

The file material provided by Linda Spooner contains:

- Invoices, to the attention of Jason Price – September 23, 2013, progress draw \$15,000.00; December 4, 2013 – final invoice \$15,259.00, totaling \$30,259.00;
- Summary of charges for materials and subcontractors⁹⁶, totaling \$16,577.47, together with supporting material invoices, including an invoice from Modern Aluminum and Vinyl Products, August 31, 2013, for an aluminum railing;
- The invoice for an aluminum railing in the amount of \$1,473.00, dated August 31, 2013, which is addressed, as “sold to”:

Spooner Construction
Jason Price
296 S. Murphy Street, Campbell River, BC,

and refers to “job”:

Spooner Construction
685 Loughborough Drive, Campbell River.

Jason Price’s home address is 685 Loughborough Drive. The business address for K&L Spooner Construction Ltd. is 296 South Murphy Street.

- Spreadsheet summarizing labour charges, including \$2,200.00 in July 2013 categorized as “deck”, together with supporting timesheets;⁹⁷
- Photographs of Maggie Henderson ramp, bathroom, kitchen;
- Photocopy of file folder showing miscellaneous calculations for labour on project;
- Letter (unaddressed) September 21, 2016 from Maggie Henderson respecting issues with her RRAP renovations;
- CMHC documents respecting the Maggie Henderson project.⁹⁸

4. Band File

The file provided by the Band includes:

⁹⁶ The photocopies of the invoices are inconsistent and incomplete. Some show a “posted” stamp, others do not. Some have handwritten notes such as Wei Wai Kum, Maggie, – it is not possible to determine by whom or when the notes were made.

⁹⁷ The timesheets are incomplete – that is, they do not fully support the spreadsheet however, the only inference from that is there are some timesheets missing.

⁹⁸ Spooner File re: Maggie Henderson Year 2013 (Appendix B, File 007).

- A copy of the invoice from Modern Aluminum and Vinyl Products for aluminum railing, with two notes by Angie Sarsons. The first note states (referring to the information on the invoice set out above) that “Jason states this is backwards - should be other way around”. The second note states “Jason did pay in cash for this item gave his status card for the tax exemption (different time frame)”. (A copy of this invoice is found at **Appendix L** of this Report).
- Campbell River Indian Band Council cheque stub to K&L Ltd. in the amount of \$27,181.00, dated September 3, 2013. This amount does not correspond to invoices in the file, which total \$30,259.00, with a final bill in December 2013. Thus, it appears that this cheque stub has been included in the Maggie Henderson file in error.
- Invoices to WWK, attention Jason Price re Margaret Henderson – September 23, 2013, Progress Draw, \$15,000.00; December 4, 2013 final invoice, material and labour \$15,259.00.
- Various documents provided to the Band Manager by Linda Spooner relating to the Maggie Henderson project, including the invoice for the aluminum railing (discussed above), an invoice from Upland Ready-mix in the amount of \$353.00 for concrete delivery to the end of Loughborough Road, and a spreadsheet relating to Maggie Henderson’s project showing K&L Ltd. including both the concrete delivery and the aluminum railing in material charges to the Maggie Henderson project. (A copy of the Upland Ready-Mix invoice is found at **Appendix L** of this Report).
- Copies of CMHC RRAP application documents for Margaret Henderson.⁹⁹

5. Conclusions

(a) *Aluminum Railing*

The alleged cash payment by Jason Price for the aluminum railing raises questions as to how K&L Ltd. received the invoice at all. If cash was paid by Mr. Price, there would be no reason to send an invoice to K&L Ltd., as the invoice, and presumably indication that it was paid, would be given directly to the payor. An alternative possibility is that K&L Ltd. paid for the railing, but Jason Price in turn paid cash to K&L Ltd.

The invoice on its face shows the aluminum railing being delivered to a job site at Jason’s home address. The explanation given to Band Manager Sarsons by Jason Price, that invoice was “backwards” does not make sense, as that would have the “job” at the address of K&L Spooner Construction Ltd.

There is no evidence that Jason Price was aware that K&L Ltd. was charging the railing to the Maggie Henderson project. However, given Mr. Price’s undisclosed relationship with K&L Ltd., he has an obligation to provide an explanation for his apparent benefit.

⁹⁹ Band File re: Maggie Henderson 2013 (Appendix B, File 002).

(b) Deck

The allegation includes that work was charged for a deck at Maggie Henderson's, but there is no deck. However, the entries in the timesheets of various employees of K&L Ltd. whose work is reflected in the spreadsheet, describe their work as "deck", "work on "deck" and "Maggie's deck".

There is no apparent explanation for the time entries referring to work on Maggie's "deck" when she did not have a deck. Linda Spooner's point that there was no corresponding charge for deck materials appears to be substantiated by a review of the invoices in the K&L Ltd. file. It appears that K&L Ltd. has charged the Maggie Henderson project for work done elsewhere. However, there is nothing in the file to indicate that the labour on the "deck" was to the benefit of Jason Price.

(c) Concrete Delivery

The invoice for supply and installation of the railing shows a posted stamp, includes a handwritten note Wei Wai Kum, Maggie, and also a note "pd MC, Sept 25/13"¹⁰⁰. The same notation "pd MC September 25/13" was made on two Upland Ready-mix invoices, including one that covered the August 6, 2013 delivery to the end of Loughborough Road.

Information provided by Band Manager Sarsons appears to substantiate that the delivery was for development of a park on Loughborough Drive, and not to Jason Price's house. There is no explanation why this delivery would have been charged to the Maggie Henderson project, when it had apparently been paid for as part of the park project.

(d) Kitchen Demolition

Although one timesheet shows seven hours for a kitchen demo, identifying the job/address as "Jason Price", the spreadsheet shows this time together with other labour on the kitchen demo at Maggie Henderson's. It is reasonable to believe that "Jason Price" was entered on the timesheet as he was the project manager involved.

(e) Overcharging by K&L Ltd.

The total of the spreadsheets for labour and materials adds to \$26,909.47 (\$10,332.00 labour, \$16,577.47 material). This amount does not correspond in any way to the final invoiced amount of \$30,259.00. Thus, there is no assurance that the improper charges identified by Linda Spooner and shown on the spreadsheet, were ever actually charged. On the other hand, the final invoice is approximately \$3,000.00 in excess of the identified charges for labour and materials.

On the basis of the spreadsheets, apparently for the purpose of billing, provided by Linda Spooner to Band Manager Sarsons in 2016, several inappropriate charges were made to the Maggie Henderson project including:

¹⁰⁰ Linda Spooner advised that "pd MC" means paid by Mastercard.

- Upland concrete \$214.46
- Upland concrete \$405.95
- Modern Aluminum and Vinyl \$1,693.95
- Deck labour \$2,200.00

As noted above, the files are incomplete and cannot be reconciled, so there may be some doubt that a final invoice to WWK is reflected in the spreadsheet. However, the inference from these documents is that K&L Ltd. was overcharging this project by over \$4,000.00.

(f) Maggie Henderson Concerns

Maggie Henderson expressed serious dissatisfaction with her RRAP renovation. It is her belief that she did not get what was promised in the renovation plan and received no adequate explanation as to why not.¹⁰¹ She is entitled to a proper explanation – either that she got what she was entitled to, or why she did not get it. Further, the Band should consider compensating her for her loss due to the apparent overcharging by K&L Ltd.

I. THUNDERBIRD HALL RENOVATION

1. Linda Spooner Allegation

Linda Spooner alleges:

- that two invoices from Jason Price to K&L Ltd. for Mr. Price’s services, were charged to the Thunderbird Hall job:
 - Invoice 110, March 19, 2014, in the amount of \$5,000.00;
 - Invoice 100, March 24, 2014, in the amount of \$6,200.00;
- that the Band was overcharged by K&L Ltd. for the installation of a floor in February 14, by approximately \$11,000.00.

2. K&L Ltd. File

The file which Ms. Spooner has provided is only a partial file. Ms. Spooner states that she has not received the entire file from her former husband.

Material in the file includes copies of:

- Two invoices from Jason Price to K&L Ltd. (noted above);
- Miscellaneous handwritten notes and calculations;

¹⁰¹ The apparent overcharging by K&L Ltd. tends to substantiate Maggie Henderson’s concerns.

- Copies of spreadsheets;
- Various estimates addressed to Jason Price for various aspects of the project;
- Invoices addressed to Jason Price for various aspects of the project; and
- Various supplier estimates and material invoices.¹⁰²

The material in the file is so incomplete and disjointed, that it establishes very little.

(a) Jason Price Invoices

Jason Price’s invoices do not establish that they were charged to the Band as part of the Thunderbird Hall renovation. The March 19, 2014 invoice is in the amount of \$6,200.00 for “capacity building”. There are handwritten notes on the invoice indicating it was paid by cheque 2517, on March 26, 2014, and a handwritten note with “Jason” and a phone number. The March 24, 2014 invoice is in the amount of \$5,000.00, “for consulting services”. There is a handwritten notation number 2475, which is the number of the cheque by which it was paid.

(b) Flooring

Based on the material in the file, it appears that K&L Ltd. has overcharged the WWK First Nation \$11,000.00 for the installation of a floor at Thunderbird Hall:

- An estimate from CR Floors Ltd. provides a grand total for supplying flooring of \$65,468. Applying the 15% standard markup used by K&L Ltd., the charge to WWK for the floor would be \$75,288.20.
- There are two estimates in the file, both marked “estimate No. 22” addressed to Jason Price. One shows the amount of \$75,288.20 for the cost of the floor, while the second shows the amount to be \$86,288.20 (\$11,000.00 more for the same floor). The invoice, dated February 17, 2014, to the attention of Jason Price shows that the greater amount of the estimates, \$86,288.20, was billed to the WWK.¹⁰³
- There is no evidence in the file or elsewhere, to indicate that Jason Price received either the estimate from CR Floors Ltd. or the K&L Ltd. estimates.

3. Band File

Band Manager Angie Sarsons advised that the Thunderbird Hall renovation was carried out under the supervision of former Band Manager Ken Cooper. However, material in the band file shows that Jason Price had some involvement in the project, as some invoices were addressed to his attention, and his initials appear on some invoices, together with those of Ken Cooper, presumably approving payment. An invoice from K&L Ltd., February 17, 2014, respecting the

¹⁰² Spooner File re: Thunderbird Hall Renovation Year 2014 (Appendix B, File 010).

¹⁰³ See Appendix M for copies of the key documents.

Thunderbird Hall flooring is addressed to the attention of Jason Price and shows the amount being billed as \$86,288.20. The invoice is initialed by Ken Cooper, but not Jason Price.

4. Conclusions

Neither of the invoices submitted by Jason Price to K&L Ltd. contains any information which would establish that they are related to the Thunderbird Hall renovation, or any other project. The fact that these invoices have been placed in the K&L Ltd. file establishes nothing, as there is no way to know how or when they were placed there.

It appears that K&L Ltd. overcharged the Band for the Thunderbird Hall floor in the amount of \$11,000.00. However, there is nothing in the file to establish that that overcharge was diverted to Jason Price. Nor is there anything in the file to establish that Jason Price had any awareness of the actual floor cost or overcharging.

J. DAY CARE PROJECT

1. Allegations

Linda Spooner and Band members made allegations that there were improprieties in the management of the Day Care project, but were not able to provide specific details, other than an allegation that Jason Price's wife was paid for working on the project, but did not do so.

2. Award of Contract

On August 31, 2015, the WWK Council resolved to award a construction project for a Day Care centre to K&L Ltd.¹⁰⁴ Councillor Jason Price did not attend the meeting, however, he did not declare his conflict of interest.¹⁰⁵

3. Management of Project

When interviewed on December 5, 2017, then Manager Sarsons advised that she, Chief Pollard and Jason Price were all involved in the management of the Day Care project. However, by email January 15, 2018, Ms. Sarsons advised that she was the one who oversaw the Day Care renovations.¹⁰⁶ Regardless of who was ultimately responsible, there are numerous documents which establish that Ms. Sarsons, Chief Pollard, and Jason Price were all involved in managing the project.¹⁰⁷

¹⁰⁴ August 31, 2015, WWK Meeting Minutes of Council (Appendix B, Document 26).

¹⁰⁵ Chief Pollard, Councillor Curtis Wilson, Councilor Marian Atkinson, former Councillor Dana Roberts, and Band Manager Angie Sarsons, have all confirmed that they knew nothing of Jason Price's business relationship with K&L Spooner Construction Ltd. until March 2016.

¹⁰⁶ Email Angie Sarsons to Emma Hume January 15, 2018.

¹⁰⁷ For example, an estimate from K&L Ltd. dated November 13, 2015 respecting the Day Care project was addressed to Jason Price, as were invoices from K&L Ltd. in January and February 2016 (Appendix B, Document 19).

4. K&L Ltd. Files

The file provided by Linda Spooner in March 2018 includes:¹⁰⁸

- Two folders containing subcontractor and material invoices;
- Two thin folders containing original receipts, and various handwritten notes; including note stating: “Quote \$280,000; Sept 17/15 Pd. \$111,660; Nov 15/15 pd: \$97,702” and a cheque stub for \$97,702 from Campbell River Band Council, with a handwritten note “deposit Nov 17/2015”; and
- A folder containing labour and payroll details, including supporting spreadsheet.

5. Band Files

There is very little information in the band file for the Day Care Centre.

The file contains 7 invoices, including invoices from K&L Ltd. to the attention of Jason Price. Most of the invoices show initials, presumably approving the invoice, by one or more of Band Manager Sarsons, Chief Pollard, and Jason Price.

The only document which appears to be of significance in the file is an “extra work invoice” from K&L Ltd. to the attention of Jason Price in the amount of \$113,439.26. A letter dated April 12, 2016, from Band Manager Sarsons to Kevin Spooner of K&L Ltd. analyzes the charges and agrees to pay \$60,705.74 as full payment for the February 16 invoice. Thus, it appears that K&L Ltd. was attempting to overcharge in an amount in excess of \$50,000.00.

6. Conclusions

Although Linda Spooner and others have alleged that Jason Price wrongfully benefitted from the Day Care Project, there is no evidence to substantiate these claims. It does appear that Mr. Price’s wife did work on the project, but there is nothing in the documentary record to suggest anything improper about this. Reviewing the file regarding the apparent overcharging by K&L Ltd. was beyond the scope of the TOR,¹⁰⁹ however it is noteworthy that in 2016 Band Manager Sarsons’ oversight of the Day Care project addressed the issue of overcharging by K&L Ltd. on the “extra work invoice”.

¹⁰⁸ Spooner File re: Day Care Centre (Appendix B, File 014). Ms. Spooner advised by email on March 22, 2018 that she had learned through her divorce proceedings that this file was not, in fact, complete and that the “paperwork had been altered and is not consistent with the way other files were created.”

¹⁰⁹ In an email received on March 22, 2018 Ms. Spooner advised of an apparent conspiracy between the Band Manager and Mr. Spooner to undercharge WWK for the Day Care project. One of the bases for this assertion appears to be that the Day Care file she received from Mr. Spooner in 2018 had been altered (though there is no evidence of the same). This assertion raises questions about Ms. Spooner’s objectivity and credibility, who sought full payment of an outstanding K&L Ltd. invoice for the Kwantwatsi Day Care in February 2017 (Ms. Sarsons advised Ms. Spooner that the Invoice had already been paid and that WWK’s business with K&L Ltd. was complete). See Appendix B, Documents 82 to 83.

K. SUMMARY OF CONCLUSIONS ON CONSTRUCTION PROJECTS

Linda Spooner alleges that Mr. Price improperly benefited from contracts taken by K&L Ltd. on WWK reserve for RRAP housing projects, the Day Care Project and the Thunderbird Hall Renovation by obtaining labour and material for his own house for which he did not pay in return for obtaining work for K&L Ltd. and accommodating overcharging by the company.

(a) *Allegations without merit*

Due to serious deficiencies with files maintained by both K&L Ltd. and WWK, in many cases the evidence is inconclusive. In other cases, available evidence does not substantiate the allegations. As a result, the evidence:

- Does not establish the allegations that Mr. Price was undercharged by K&L Ltd. for his home renovation in 2013;
- Does not establish the allegations that Mr. Price obtained a benefit from K&L Ltd.'s work on the Thunderbird Hall, despite the fact that K&L Ltd. appears to have overcharged WWK \$11,000 for the installation of the new floor;
- Does not establish the allegations that K&L Ltd. charges for roofing labour on Ollie Henderson's RRAP project in June and July 2013 were actually for the benefit of Mr. Price;
- Does not establish the allegations that K&L Ltd charges for labour on Maggie Henderson's RRAP project, including for her deck and kitchen demolition, was actually undertaken for the benefit of Mr. Price; and
- Does not establish the allegations that Mr. Price (or his wife) obtained a benefit in the Day Care renovation project.

Suspicion alone regarding benefits Mr. Price, or his immediately family, may or may not have received from K&L Ltd. are not enough to require an explanation from Mr. Price to establish that he did not benefit or otherwise breach his fiduciary duties. Only where the evidence indicates that Mr. Price was likely to have received an undisclosed benefit (as discussed below) is an explanation from Mr. Price required.

(b) *Allegations with merit*

However, with respect to other allegations the evidence raises serious questions whether Mr. Price received benefits from K&L Ltd. work on RRAP projects, including:

- For labour for the construction of a "little door" on Mr. Price's home in November 2014 that may have been charged by K&L Ltd. to the Quocksister RRAP project;¹¹⁰

¹¹⁰ See Appendix I of this Report for copies of key documents.

- From the delivery of \$900 in fencing at Mr. Price’s home that K&L Ltd. charged to Ollie Henderson’s RRAP project;¹¹¹
- For the \$4,700 in materials and labour for installation of stairs at Mr. Price’s home that K&L Ltd. charged to the Lloyd Henderson RRAP project;¹¹² and
- For the aluminum railing that K&L Ltd. charged to Maggie Henderson’s RRAP project but delivered to Mr. Price’s home.¹¹³

Further, it is undisputed that K&L Ltd. prepared an invoice for \$12,172.76 in January 2014¹¹⁴ for home renovations K&L Ltd. undertook. There is no documentary evidence to establish that Mr. Price paid this invoice,¹¹⁵ though during previous investigations Mr. Price advised that he “paid cash”.

Given Mr. Price’s fiduciary obligations and his undisclosed conflict of interest in dealing with K&L Ltd., Mr. Price has an obligation to establish that he paid for the work and materials obtained through K&L Ltd., including for his home renovation and various RRAP projects listed above. Mr. Price chose not to be interviewed as part of this investigation, or provide a response to the Allegations of Wrongdoing, including those with merit. As a result, absent an explanation establishing that Mr. Price did not benefit, as the evidence suggests, he is breach of his fiduciary duties to WWK.

(c) Overcharging by K&L Ltd.

The available evidence indicates that K&L Ltd. overcharged on several projects on WWK Reserve, including on the RRAP projects for Lloyd Henderson, Ollie Henderson, Quocksister, Christine Roberts, Maggie Henderson and on the Thunderbird Hall project. On the Lloyd Henderson project, a \$4,500 overcharge by K&L Ltd. was attributed to an invoice for the same amount from Jason Price. However, given the lack of reliability of the K&L Ltd. files, no firm conclusion can be drawn regarding any of this overcharging. Nor is there any evidence to suggest that Jason Price was aware of this overcharging, although he ought to have been, given his involvement in managing projects on behalf of WWK.

Apparent overcharging in 2016 by K&L Ltd. on the Day Care project was addressed by Ms. Sarsons, which identified K&L Ltd.’s attempt to overcharge WWK an amount in excess of \$50,000.¹¹⁶

¹¹¹ See Appendix H of this Report for copies of key documents.

¹¹² See Appendix K of this Report for copies of key documents.

¹¹³ See Appendix L of this Report for copies of key documents.

¹¹⁴ See Appendix F of this Report for a copy of the January 2014 Invoice.

¹¹⁵ There is a note on the Band Manager’s copy of the K&L Ltd. invoice for Mr. Price’s renovations, that Mr. Price informed Ms. Sarsons that he had never seen this invoice (Appendix B, Document 18).

¹¹⁶ In an email received on March 22, 2018 Ms. Spooner advised of an apparent conspiracy between the Band Manager and Mr. Spooner to undercharge WWK for the Day Care project. One of the bases for this assertion appears to be that the Day Care file she received from Mr. Spooner in 2018 had been altered (though there is no evidence of the same), raising questions about Ms. Spooner’s objectivity and credibility.

PART IX - ADEQUACY OF INVESTIGATIONS

A. WERE INVESTIGATIONS THOROUGH AND INDEPENDENT?

The formal complaint of Frances Roberts, September 1, 2017, alleges that the WWK Council has not taken adequate measures to address the Jason Price matter. The formal complaint by Ms. Roberts is incorporated in the Terms of Reference for this investigation. Some members of council and numerous Band members have expressed agreement with Ms. Roberts.

To the contrary, Chief Pollard, and Band Manager Angie Sarsons have asserted that numerous investigations have been conducted and found no wrongdoing.

Thus, it is necessary to consider each of the investigations which have been referred to by Chief Pollard and the Band Manager, to determine whether they were in fact adequate to address the issues which have been raised. Seven “investigations” have been cited at various times. These are the:

- Investigation by Band Manager, Angie Sarsons;
- Investigation by lawyer, Jack Woodward;
- Investigation by lawyer, Sam Gordon;
- Investigation by the Canada Mortgage and Housing Corporation (“CMHC”);
- Investigation by the Department of Indian (now Indigenous) and Northern Affairs Canada (“INAC”);
- Investigation by lawyer, Berry Hykin; and
- Investigation by the RCMP.

In determining whether or not the investigations which have been cited have been adequate to deal with the matters which are the subject of the TOR for the present investigation, it is necessary to consider the following questions:

- What was the scope of the investigation? Did it consider the actions and alleged actions of Jason Price in his role as a Councillor? (referred to as the “scope of investigation”).
- Did the investigation have access to all of the available evidence respecting the allegations? (referred to as the “access to evidence”).
- If the investigation had access to the available evidence, was the available evidence reviewed and considered before reporting? (referred to as the “consideration of evidence”).

- Was the person conducting the investigation independent of authority within the WWK First Nation? (referred to as “independence”).

In order for any investigation to be considered thorough and independent, each of these questions must be answered in the affirmative.

B. SUMMARY OF CONCLUSIONS

For the reasons set out below, none of the investigations which have been cited at the various times can be considered to be thorough and independent.

1. Investigation by the Band Manager

The investigation by the Band Manager cannot be considered adequate to deal with the Spooner Allegations.

- The scope of the Band Manager’s investigation was limited to the activities of Jason Price as an employee, not a Councillor.
- The consideration of evidence by the Band Manager was inadequate, in that she did not consider all available evidence, did not follow up on her own demands for details, and accepted the statements of those accused of wrongdoing, Jason Price and Kevin Spooner, without critical analysis.
- The investigation was not independent, since at all times, the Band Manager was under the direction of Chief Pollard.

2. Investigation by Lawyer, Jack Woodward

The investigation by lawyer Jack Woodward cannot be considered adequate:

- As with the investigation by the Band Manager, Mr. Woodward’s investigation was limited in scope to considering the activities of Jason Price as an employee, not as a Councillor.
- Mr. Woodward’s access to evidence was limited to a review of the evidence identified by the Band Manager. He did not seek further evidence and, given his instructions, did not consider any evidence which the Band Manager did not consider.
- The investigation was not independent, as at all times Mr. Woodward was acting under the instructions of the Chief and Band Manager.

3. Investigation by Lawyer, Sam Gordon

No investigation was conducted by lawyer Sam Gordon.

4. Investigation by the CMHC

There was no investigation by CMHC into the Residential Rehabilitation Assistance Program On-Reserve (the “RRAP program”) nor the allegations against Jason Price.

5. Investigation by the Department of Indian and Northern Affairs Canada

Due to its limited scope, the INAC investigation was not adequate to deal with the allegations against Jason Price.

6. Investigation by Lawyer, Berry Hykin

Given the limited time and limited evidence available to Ms. Hykin when she prepared her memorandum and the fact that she was acting under the instructions of Chief Pollard and the Band Manager, her investigation cannot be considered adequate to deal with the allegations against Jason Price.

7. Investigation by the RCMP

Although the RCMP investigation was fully independent, and carried out by trained investigators over the period of a year, it cannot be considered adequate to deal with the allegations. The RCMP restricted their investigation to criminal matters and did not (and could not, given their role), consider the law of fiduciary duty or WWK policies.

C. INVESTIGATION BY THE BAND MANAGER

1. Description of Investigation

Band Manager Angie Sarsons was instructed by Chief Pollard, on March 7, 2016, to investigate Linda Spooner’s allegations respecting Jason Price. Ms. Sarsons reviewed the evidence provided by Linda Spooner, interviewed Ms. Spooner three times, Kevin Spooner twice, and Jason Price twice. Ms. Sarsons contacted lawyer Sam Gordon for advice on the Band’s rights and duties as Mr. Price’s employer, and obtained assistance from Ms. Gordon with a letter sent to Mr. Price March 8, 2016. Ms. Sarsons also obtained legal advice from lawyer Jack Woodward respecting her findings. These findings were set down in a report dated March 16, 2016, entitled “Chronology of Events – Independent Investigation into Allegations Brought Forward by Linda Spooner in Relation to Jason Price.” This report can be found at **Appendix N** of this Report.

2. Adequacy of Investigation

For the reasons that follow, the March 16, 2016 report¹¹⁷ by the Band Manager cannot be considered adequate to deal with the Spooner allegations.

¹¹⁷ March 16, 2016, Band Manager, Angie Sarsons Report (Appendix B, Document 90-1).

3. Scope of Investigation

The Band Manager's March 16, 2016 report focuses on Jason Price as an employee of the Band, not as WWK Councillor. This limited approach is confirmed by numerous documents, including the March 17, 2016 letter from Jack Woodward to Chief Pollard, where he states "the Band Manager does not investigate a Councillor in connection with section 2.14. Only council can do that."¹¹⁸ Band Manager, Angie Sarsons advised Linda Spooner by email April 6, 2016, in respect of the information Ms. Spooner had provided, "we are to address this as an internal staffing matter".¹¹⁹ Ms. Sarsons confirmed her approach that she was investigating a staffing matter, in our interview December 4, 2017.

4. Access to Evidence

Ms. Sarsons had access to the available evidence and had the opportunity to interview those with personal knowledge respecting the allegations.

5. Consideration of Evidence

In various ways, the March 16, 2016 report is deficient in its consideration and evaluation of evidence. In initiating her investigation, the Band Manager wrote to Jason Price on March 8, 2016, and requested:

"We ask that you provide to us detailed notes on the invoices that you submitted to K&L Spooner Construction ("K&L") describing and demonstrating the exact nature of the services provided to K&L. We need this information as soon as possible and in any event by **Thursday, March 10, 2016 at 4:00 pm.** Any delay in providing to us this information could delay our investigation."¹²⁰ (emphasis added)

However, this demand was never followed up. The report notes that Jason Price no longer had the hard drive for his computer, which had been destroyed, a fact confirmed by the Band Manager. However, no further effort was made to obtain details of the exact nature of the services provided, as requested in the letter.

The Band Manager interviewed Kevin Spooner who said Jason Price was paid for his technical expertise in scheduling/databases, his understanding of funding initiatives, and promotion and marketing with the Campbell River Storm hockey team. Examples of Jason Price's work were requested, but never provided.

The Band Manager appeared to consider the fact that Kevin Spooner and Jason Price provided consistent descriptions of the work which Jason Price undertook for K&L Ltd. to be significant, noting that Jason Price "corroborated the same information shared by Kevin Spooner".¹²¹ The

¹¹⁸ March 17, 2016, Letter re: Review of internal procedure regarding allegations by Linda Spooner (Appendix B, Document 53).

¹¹⁹ April 6, 2016, Email re: K&L Ltd. Update (Appendix B, Document 60).

¹²⁰ March 8, 2016, Letter re: Independent Investigation (Appendix B, Document 35).

¹²¹ March 16, 2016, Band Manager, Angie Sarsons Report (Appendix B, Document 90-1).

descriptions of this work were vague and lacked detail, and neither Kevin Spooner nor Jason Price provided more than these general descriptions.¹²²

In drafting her report, Ms. Sarsons was unaware that Ms. Spooner's March 1, 2016 allegations had been forwarded to Jason Price by Chief Pollard by email that same day. Had she known that Jason Price had been given this advance notice of the accusations, she may have been less willing to put weight on her observation that both Jason Price and Kevin Spooner corroborated each other's information.

Ms. Sarsons also accepted statements of Kevin Spooner about the nature of the work undertaken by Jason Price which did not include Jason Price obtaining work for K&L Ltd. During her investigation, Ms. Sarsons was unaware of the sworn statement in an affidavit made by Kevin Spooner, made in February 2016, which stated:

"Jason Price is a long time client of the construction company. I had paid Jason Price in the past to find contracts for me. It is not a kick-back and is all on the "up and up". He has invoiced me for his services. It is not unusual and is called "capacity building" – where you get people to source work or develop work for you." (emphasis added)¹²³

Although Ms. Sarsons was unaware of the affidavit, it had been referred to by Linda Spooner in her email of March 1, 2016, on which Ms. Sarsons was cc'd. The email stated:

"My husband has indicated through an affidavit that this type of business was all on the up and up and that he pays Jason to find him work on the reserve as a finders fee."¹²⁴

Several of the invoices by which Jason Price obtained payments from K&L Ltd. were for "capacity building".¹²⁵

Ms. Sarsons also accepted Jason Price's explanation respecting the Day Care renovation approval by WWK Council:

"He also mentioned that in relation to the Day Care Renovation Project, he had made sure to declare a conflict and removed himself from the voting process in relation to Council's discussion and a vote on awarding of the contract for that project. The council minutes for that decision demonstrate this."¹²⁶

¹²² When interviewed December 4, 2017, Band Manager Sarsons advised that Kevin Spooner was unable to provide examples of the work Jason Price had done for him. She noted that he was not in a good place emotionally, due to his divorce and was unwilling to cooperate further. Ms. Sarsons made several unsuccessful attempts to follow up with Mr. Spooner by text message.

¹²³ February 27, 2016, Affidavit of Kevin Spooner (Appendix B, Document 94-1 and 32).

¹²⁴ March 1, 2016, Email from L. Spooner to Chief Pollard (Appendix B, Document 33A).

¹²⁵ Jason Price invoices for "capacity building" (Appendix B, Document 19, August, 19, 2014; Document 21, December 11, 2014; Document 107-1, March 20, 2015).

¹²⁶ March 16, 2016, Chronology of Events: Independent [Sic] Investigation In To [Sic] Allegations Brought Forward by Linda Spooner in Relation to Jason Price (Appendix B, Document 90-1).

This information is not correct, and Ms. Sarsons ought to have known it was not correct, or at a minimum reviewed the meeting minutes to verify the statement. Although Councillor Price was absent for the approval of the Day Care Renovation on August 31, 2015, he had not declared a conflict of interest. There is no declaration of a conflict of interest in the meeting minutes. Mr. Price's failure to declare of conflict of interest is further demonstrated by the fact that Ms. Sarsons and several of the sitting council members (Chief Pollard, acting Chief Curtis Wilson, and Councillor Marian Atkinson) advised that they were not aware of Mr. Price's work for K&L Ltd. until March of 2016.¹²⁷

6. Independence

It cannot be said that the Band Manager's investigation was independent, despite the title of her report. At all times she was subject to supervision and direction of Chief Pollard. Although there is no evidence that she was expressly directed to take any particular position on the report, the actions of the Chief Pollard at the time, and subsequently, make it clear that he was supportive of Jason Price.

Thus, despite her best intentions, the Band Manager was in a position of conflict of interest in drafting the report.

D. INVESTIGATION BY LAWYER, JACK WOODWARD

1. Description of Investigation

Lawyer Jack Woodward, Q.C. provided a letter to Chief Robert Pollard, dated March 17, 2016, re: "review of internal procedure regarding allegations by Linda Spooner".¹²⁸ Mr. Woodward states that: "[t]he purpose of my letter is to offer a brief independent review of the entire process." Mr. Woodward's letter is found at **Appendix O** to this Report.

The Woodward investigation was a review of the work of the Band Manager in preparing her investigative report. The letter is two and a half pages in length and confirms the Band Manager's conclusion.

In respect of the question whether the Band Manager conducted a proper investigation, Mr. Woodward concluded "from my observation the investigation was conducted quickly, thoroughly and effectively. Jason was treated fairly".¹²⁹

On the questions whether Jason did anything wrong, Mr. Woodward stated "I have reviewed the evidence on which Angie based her conclusion that Jason did nothing wrong and I agree with her".¹³⁰

¹²⁷ This was confirmed in interviews of Chief Pollard, Councillor Wilson and Councillor Atkinson on December 4 and 5, 2017.

¹²⁸ March 17, 2016, letter from Jack Woodward, Q.C. to Chief Robert Pollard re: Review of internal procedure regarding allegations by Linda Spooner (Appendix B, Document 54).

¹²⁹ March 17, 2016, letter from Jack Woodward, Q.C. to Chief Robert Pollard re: Review of internal procedure regarding allegations by Linda Spooner (Appendix B, Document 54).

With regard to Band policies, Mr. Woodward observed that the Operations Manual provided “very little guidance...about the process to be followed” he also stated “the Band Manager does not investigate a councillor in connection with section 2.14. Only council can do that.”¹³¹ (emphasis added)

Mr. Woodward also wrote a letter to Simon Wells, Mr. Price’s lawyer, entitled “JASON PRICE: the ‘Innocent Explanation’”, dated August 24, 2016.¹³² This letter was prepared on the instructions of Chief Pollard.¹³³

2. Adequacy of Investigation

For the reasons that follow, the March 17, 2016 letter from Mr. Woodward to Chief Pollard cannot be considered adequate to deal with the Spooner Allegations. The investigation was limited to an investigation of Jason Price as an employee, not a Councillor, and was neither thorough nor independent.

3. Scope of Investigation

Mr. Woodward confirms that the Band Manager’s investigation was restricted to an employment matter, and was not an investigation of the actions of a Councillor. Since Mr. Woodward’s investigation was a review and approval of the work done by Band Manager Sarsons, it was likewise restricted to the employment matter and did not consider Mr. Price’s obligations as an elected Councillor.

4. Access to Evidence

Mr. Woodward's investigation was limited to a review of the Band Manager’s investigation and the evidence on which the Band Manager based her conclusion.

Mr. Woodward did not have the benefit of interviewing persons who had or might have had knowledge of the allegations. For example he would have been unaware of Chief Pollard’s March 1, 2016 email notifying Jason Price of the allegations a week before the investigation was commenced, since Band Manager Sarsons was also unaware of that email. There is also no indication that Mr. Woodward was aware of the conflict between Mr. Spooner’s sworn statement that he paid Jason Price for “capacity building”, which was to find contracts for his construction company, and his apparent denial of that in his interviews with Ms. Sarsons.

¹³⁰ March 17, 2016, letter from Jack Woodward, Q.C. to Chief Robert Pollard re: Review of internal procedure regarding allegations by Linda Spooner (Appendix B, Document 54).

¹³¹ March 17, 2016, letter from Jack Woodward, Q.C. to Chief Robert Pollard re: Review of internal procedure regarding allegations by Linda Spooner (Appendix B, Document 54).

¹³² August 24, 2016 , letter from Jack Woodward, Q.C. to Simon Wells re: Jason Price: the “Innocent Explanation” (Appendix B, Document 70).

¹³³ August 18, 2016, Jack Woodward, Q.C. Invoice re: Alleged conflict of interest against band member and Councillor (Appendix B, Document 65).

5. Consideration of Evidence

Given Mr. Woodward's review was restricted to the evidence considered by the Band Manager, he necessarily did not consider potential relevant evidence which was not considered by Ms. Sarsons.

Further, Mr. Woodward's invoice for the period of March 14-17, 2016¹³⁴ indicates he spent only four hours on dealing with this matter, two hours reviewing material, and two hours drafting his letter.

6. Independence

In carrying out his work, Mr. Woodward was acting under the instructions of Chief Pollard and Band Manager, Angie Sarsons. There is no indication that Mr. Woodward was instructed to investigate independently of the investigation by Band Manager Sarsons, nor is there any such indication on his invoice of March 23, 2016.¹³⁵

E. INVESTIGATION BY LAWYER, SAM GORDON

1. Description of Investigation

Although lawyer Sam Gordon was consulted by the Band Manager regarding employment issues at the time the Spooner Allegations were made in March, 2016, and later in respect to various related issues, there is no document from Ms. Gordon which could be considered an investigative report. Thus, it is unnecessary to consider the adequacy of her investigation, as there was none.

F. INVESTIGATION BY CMHC

1. Description of Investigation

In my review of records provided by the Band Manager and the Band's law firm, Woodward & Company, I found nothing which could be considered an investigation report by CMHC into the allegations against Jason Price, nor the RRAP Program.

However, on more than one occasion, Chief Pollard made reference to the "CMHC investigation", which he claimed exonerated Jason Price and the band from any wrongdoing.

In her letter to INAC, May 17, 2017,¹³⁶ lawyer Berry Hykin stated "CMHC has conducted its own audit and has found no issue with Wei Wai Kum's funding records or other practices" (in response to my inquiry during my investigation, Ms. Hykin clarified that she had relied on verbal

¹³⁴Invoices from Jack Woodward re: Alleged conflict of interest. March 23, 2016, Moonlighting policy, pg. 3 (Appendix B, Document 77A).

¹³⁵Invoices from Jack Woodward re: Alleged conflict of interest. March 23, 2016, Moonlighting policy, pg. 3, (Appendix B, Document 77A).

¹³⁶May 17, 2017, letter from Ms. Hykin to INAC re: Investigation into Wei Wai Kum First Nation (Appendix B, Document 95).

advice from Band Manager Angie Sarsons of the existence of this alleged audit, but did not possess a copy).

Band Manager Angie Sarsons has confirmed that the report to which she and Chief Pollard have referred is a letter dated May 30, 2016, to the Campbell River Indian Band from Christina Mielke, Consultant, First Nation Housing, on behalf of CMHC. This letter attaches a four page report respecting “On-Reserve Non Profit Housing Program (NHA Section 95)”.¹³⁷ The letter and report are found at **Appendix P** of this Report. The On-reserve Nonprofit Housing Program is not the subject of any of the allegations respecting Jason Price. Neither the letter nor the attached report makes any reference to the RRAP program which is the subject of the allegations of Linda Spooner and others, nor does it make any reference to any investigation of alleged improprieties by Mr. Price.

We have inquired with Ms. Sarsons whether there is any other CMHC report for the years 2013-16, but have been advised that there is only the May 30, 2016 letter and attached report from Ms. Mielke.¹³⁸

The CMHC report dated May 30, 2016, is not a report on an investigation of the allegations of improper conduct on the part of Jason Price, and does not contain any approval or even comment on the RRAP construction undertaken by K&L Ltd. on WWK reserve lands in 2013-14.

Given that there was no investigation by CMHC into the Spooner Allegations nor the RRAP Program, it is unnecessary to consider the adequacy of this investigation further.

G. INVESTIGATION BY THE DEPARTMENT OF INDIAN AND NORTHERN AFFAIRS CANADA

1. Description of Investigation

INAC commenced an investigation into the allegations respecting Jason Price in the summer of 2016, apparently in response to complaints and allegations forwarded to the Department by dissatisfied Band members.

There was considerable resistance to the INAC investigation by Chief Pollard, and the eventual INAC report, submitted to Band council in August 2017 was strictly limited in its scope.

The INAC investigation may have been an adequate investigation had it not been for the interference by the Administration, including Chief Pollard, and their instructions to the Band’s lawyers.

2. Chronology

An invoice from lawyer Jack Woodward, Q.C. for July 8, 2016, describes a call from Chief Pollard:

¹³⁷ May 30, 2016, letter from CMHC to Chief Pollard and Councillors re: On-Reserve Non Profit Housing Program NHA Section 95) (Appendix B, Document 130-1).

¹³⁸ December 12, 2017, email from Ms. Sarsons re: CMHC Report of their on-site visit (Appendix B, Document 133); a copy of this correspondence is attached at Appendix P to this report.

“The Chief was contacted by two DIAND officials from Ottawa who have been asked to do an internal investigation. They want all the documents but the Chief says we have to respect Jason’s rights. However, the Chief’s instructions to Jack are that if he can give them “a little bit”, some little thing, orally that would help them close their file, to do so.”¹³⁹

Chief Pollard was unsuccessful in putting off the INAC investigation and it proceeded through the fall of 2016.

On January 13, 2017, a letter was sent to Chief Pollard by Jean-Marc Lafreniere, Director Assessment and Investigation Services Branch at INAC. The letter stated “the purpose of this letter is to share with you the results of our review of allegations of kick-backs at Wei Wai Kum First Nation. We would very much appreciate if you would review by January 27, 2017, the enclosed report, and provide us with any errors in fact or any additional information to assist us in completing the report.” The letter enclosed a “fact verification report”.¹⁴⁰

The Fact Verification Report, enclosed in the letter, consisted of seven pages of large type, including four pages of “findings”.

On January 25, 2017, Chief Pollard responded to Mr. Lafreniere providing a critique of the INAC Fact Verification Report.¹⁴¹ Among other things, the Chief’s letter questioned the scope of INAC’s jurisdiction to investigate, stating: “the introduction should clearly state INAC’s jurisdiction and mandate to conduct this investigation and any limits.”

The overall thrust of the January 25, 2017 letter appears to be directed at the protection of Jason Price.

On February 17, 2017, Mr. Lafreniere again wrote to Chief Pollard, stating “the purpose of this letter is to provide an update on the findings and conclusions of the investigation at Wei Wai Kum First Nation after consideration of the information provided in your letter of January 25, 2017....” The letter enclosed a “summary report of our findings” and offered to meet with Chief Pollard and Council to present findings, conclusions, and recommendations.¹⁴²

In May 2017, lawyer Berry Hykin of Woodward & Company LLP became involved in the file on behalf of the Wei Wai Kum Band, meeting with WWK Council on May 8, 2017.¹⁴³

On May 17, 2017, at the direction of WWK Council, Ms. Hykin wrote to INAC respecting the investigation. Ms. Hykin expressed concern about the report:

¹³⁹ August 18, 2016, Invoice re: Alleged conflict of interest against band member and councilor (Appendix B, Document 65).

¹⁴⁰ November 15, 2016, Wei Wai Kum First Nation Fact Verification Report (Appendix B, Document 78-1).

¹⁴¹ January 25, 2017, letter from Chief Pollard to INAC re: Wei Wai Kum First Nation Fact Verification Report dated January 13, 2017 (Appendix B, Document 80).

¹⁴² February 17, 2017, letter re: Management Letter - Investigation at Wei Wai Kum First Nation and enclosing report (Appendix B, Document 85).

¹⁴³ May 8, 2017, WWK In-Camera Meeting of Council – Council Minutes (Appendix B, Document 92).

“As discussed, it is my opinion that the document contains serious deficiencies which are problematic for the individual under investigation, Mr. Jason Price, and, more importantly, problematic for the First Nation. We have been advised by Mr. Price’s legal counsel that should any part of the report be made public, he will sue for defamation.”

She then went on to assert that INAC was exceeding its jurisdiction in drafting the report. She states:

“Specifically, that INAC’s authority to investigate allegations and complaints is with respect to misuse of funding provided by INAC and extends no further than that. The current perception of the INAC investigation both within the Wei Wai Kum community, and in the public at large, is that it is a comprehensive investigation into all aspects of this matter. INAC does not have that authority and that must be set out clearly in the Report.” (underlining by Ms. Hykin)

She urged INAC to review and revise the report.¹⁴⁴

On June 13, 2017, Mr. Lafreniere responded to Ms. Hykin, confirming receipt of her letter he states “we have considered your comments and are finalizing a revised summary report which will be shared with the Chief once completed”.¹⁴⁵

On or about July 20, 2017 INAC provided a revised “Summary Report”, dated July 20, 2017,¹⁴⁶ a copy of this report is attached as **Appendix Q** of this Report.

Negotiations took place between Ms. Hykin, Simon Wells (lawyer for Jason Price), and INAC officials prior to and following the July 20, 2017 INAC report. We are not aware of the details of these negotiations.¹⁴⁷

3. Adequacy of Investigation

Although the INAC investigation was initiated as a full investigation of the allegations of wrongdoing, the final report was so limited in its scope that it could not be considered adequate to deal with the Spooner Allegations.

4. Scope of Investigation

INAC representatives sought to conduct a full investigation of the Spooner Allegations beginning in August 2016. However, over the next year, the scope of their investigation was narrowed to matters under INAC’s jurisdiction, which did not include CMHC projects. Nor did it include issues relating to the obligations of a Councillor to the Band. It may be significant that

¹⁴⁴ May 17, 2017, letter re: Investigation into Wei Wai Kum First Nation (Appendix B, Document 95).

¹⁴⁵ July 7, 2017, email re: Wei Wai Kum First Nation - Investigation - Update from INAC (Appendix B, Document 103).

¹⁴⁶ July 20, 2017, Wei Wai Kum First Nation - Summary Report (Appendix B, Document 106).

¹⁴⁷ In providing documents for the purpose of this investigation, Ms. Hykin advised that she had not included some of her correspondence with Simon Wells, as it took place on a confidential, without prejudice basis.

the limited scope of the final investigation report was due to the express efforts of Chief Pollard and lawyers acting under his instructions, which is discussed further in the “Misinformation” Section of this report.

5. Access to Evidence

INAC officials were given extensive access to WWK files. There is no suggestion they were prevented from obtaining evidence.

6. Consideration of Evidence

Initially, INAC investigators had regard to the range of evidence available, and made tentative findings of fact in January 2017. However, the eventual limited scope of their report substantially restricted the evidence that they could consider.

7. Independence

The INAC investigators were fully independent from the WKK and interested parties. However, they were under considerable pressure from Chief Pollard and lawyers for both the Band and Jason Price to restrict their investigation.

H. INVESTIGATION BY LAWYER, BERRY HYKIN

1. Description of Investigation

Berry Hykin became involved in the Jason Price matter in May, 2017, when she was sent a package of materials by Band Manager, Angie Sarsons.¹⁴⁸ Prior to this time, the lawyers involved advising the Band were Jack Woodward and Sam Gordon (discussed above).

Ms. Hykin prepared a memorandum dated May 8, 2017, regarding the Jason Price matter¹⁴⁹ and made a presentation to an in-camera meeting of council the same day.

2. Adequacy of Investigation

For the reasons that follow, the May 8, 2017 memo and meeting with Band council cannot be considered adequate to deal with the Spooner allegations. Although Ms. Hykin was involved in various dealings respecting the Jason Price matter after May 8, 2017, she did not conduct further investigations, nor provide a further report.

3. Scope of Investigation

Ms. Hykin’s May 8, 2017 memorandum and her presentation to Council considered the position of Jason Price both as a Councillor and an employee, although her focus was substantially on his role as an employee, and the Band’s consequent responsibilities.

¹⁴⁸ May 3, 2017, email re: Chronology of Events, Letters to Jason Price, and Letter from Jack Woodward to Chief and Council regarding Investigation (Investigation Document 90).

¹⁴⁹ May 8, 2017 Memo re: Allegations against Jason Price (Investigation Document 93).

4. Access to Evidence

There was limited evidence available to Ms. Hykin in preparing her May 8, 2017 memo. On May 3, 2017, Band Manager Sarsons had provided Ms. Hykin with Ms. Sarsons' investigative report, Jack Woodward's supportive report, Jack Woodward's August 24, 2016 letter to Simon Wells regarding "Jason Price: the 'Innocent Explanation'" and a few items of correspondence.

In a letter of May 30, 2017¹⁵⁰, Peter Jones, an associate of Ms. Hykin, provided a list of the documents available to her in providing her written opinion of May 8, 2017. Mr. Jones listed 15 documents which had been received from WWK, as well as WWK governance and personnel policies.

This limited amount of evidence, and the limited time available to make further inquiries was insufficient to allow Ms. Hykin to conduct a proper investigation. (May 3, 2017 was a Wednesday, May 8, 2017 a Monday, so there were only two working days between). Further, she was acting under the instructions of the Band Manager, and there is no evidence that she was asked to look into the matter further, nor evidence that she was asked to do an independent investigation.

5. Consideration of Evidence

Given the limited amount of evidence available to Ms. Hykin at the time of writing her memo it was not possible for her to give full consideration to potentially relevant evidence. For example, she did not know of the March 1, 2016 email, forwarded by Chief Pollard to Jason Price advising him of Linda Spooner's allegations, nor the sworn statement of Kevin Spooner which would have cast doubt on his statements to Band Manager Sarsons in March 2016, nor the various documents claimed by Linda Spooner to substantiate her allegations.

6. Independence

Ms. Hykin's memorandum of May 8, 2017, could not be considered independent. As a lawyer, Ms. Hykin was acting under instructions, and there is no evidence that she was ever instructed to conduct an independent investigation into the Jason Price matter. Much of her understanding of the issue was shaped by advice from the Chief and Band Manager rather than her access to first hand evidence. For example, in her correspondence with INAC she refers to "CMHC audits".¹⁵¹ However, this statement was made on the basis of verbal advice from the Band Manager provided via telephone and at the May 8, 2017 council meeting.¹⁵² There is no "CMHC audit" that deals with the RRAP program in 2013-14 or the allegations of wrongdoing by Jason Price.¹⁵³

¹⁵⁰ May 30, 2017, Memo re: Documents reviewed by J. Berry Hykin on the Jason Price matter (Investigation Document 98).

¹⁵¹ May 17, 2017, letter from B. Hykin to INAC re: Investigation into WWK Nation (Investigation Document 95).

¹⁵² January 8, 2018, email from B. Hykin to J. Rich re: WWK Investigation.

¹⁵³ May 30, 2016, letter from CMHC to Chief Pollard and Councillors re: On-Reserve Non Profit Housing Program (NHA Section 95). As discussed above, this report does not deal with the RRAP Program or allegations against Mr. Price (Investigation Document 130-1).

I. INVESTIGATION BY THE RCMP

1. Description of Investigation

The Campbell River RCMP conducted an investigation into the Spooner allegations commencing in the fall of 2016 and concluding in November 2017. In a letter to acting Chief Curtis Wilson, dated November 14, 2017, RCMP Inspector Jeff Preston advised that the RCMP investigation into allegations of fraud by Jason Price was concluded. He stated “we have determined that there is no evidence to support the claims that Mr. Price received payments in the form of kick-backs from K&L Ltd. or that he misappropriated funds from the band through the Renovation Rehabilitation Assistance Program (RRAP).”¹⁵⁴

2. Adequacy of Investigation

For the reasons that follow, the RCMP investigation and its conclusion cannot be considered adequate to deal with the issues raised by the Spooner Allegations.

3. Scope of Investigation

The RCMP investigation, given that they are a police force, was restricted to the determination whether there was criminal activity.

RCMP Constable Desmet summarized what he had to do in his investigation:

“Do we have a victim? Is there a criminal offence? And can we prove it? Those are the three things I have to look at. Right, wrong or otherwise.”¹⁵⁵

The thoroughness of the RCMP investigation is uncertain. When asked, Inspector Preston declined to comment on the extent of the investigation.

4. Access to Evidence

As a police force, the RCMP has a mandate to seek and obtain evidence.

5. Consideration of Evidence

In my interview with Inspector Preston, he explained that the objective of RCMP investigations is to determine whether there is evidence which leads to a substantial prospect of conviction of a criminal offence. However, it is noteworthy that he stated in his letter that there was “no evidence”. In response to my question as to where the RCMP looked for evidence, Inspector Preston stated that he could not comment on that.

Interested persons, from both perspectives, provided their views to the RCMP in the course of the criminal investigation.

¹⁵⁴ November 14, 2017, letter from J. Preston to Acting Chief re: RCMP Investigation – PRICE, Jason (Investigation Document 127A).

¹⁵⁵ June 24, 2016, Transcript of Discussion – Coral Atkinson, community meeting (Investigation Document 60C).

Linda Spooner, together with some Band members, met with RCMP Constable Desmet to present what they believed to be evidence of wrongdoing by Jason Price. They also expressed concern that the evidence considered by the RCMP was provided by the Band Administration.

On the other hand, Band Manager Angie Sarsons provided information to the RCMP which she said provided support for the evidence she had received from Kevin Spooner and cast doubt the motivation of certain Band members.¹⁵⁶

There is no reason to believe that the RCMP disregarded evidence available to them, including the evidence provided by Linda Spooner and the evidence provided by Angie Sarsons. Further, Constable Desmet advised that he had been investigating the allegations for close to a year, and with regard to the Band, “whether they say yes or no, it’s not going to change my actions at all”.¹⁵⁷

6. Independence

The RCMP is fully independent.

J. CONCLUSION

For the reasons outlined above, all of the investigations outlined above either never occurred, or cannot be considered adequate due to limits on their scope, access or consideration of evidence, or lack of independence.

PART X - MISINFORMATION

A. THE ALLEGATIONS

The Formal Complaint alleges that the Allegations of Wrongdoing were not fairly, or justly, dealt with because the Band Administration (characterized by the complainants as the Band Manager and Chief Pollard) inappropriately “inserted themselves” into the various investigations and closed their minds to Ms. Spooner and her evidence. Then, in the face of this alleged injustice, the Band Manager and Chief Pollard spread misinformation about the adequacy of the investigations, the reliability of Ms. Spooner and the evidence considered. When the community raised concerns with how the Allegations of Wrongdoing were handled, the threat of a defamation lawsuit from Mr. Price was used in an attempt to quell public outcry.

There are three main components to the Formal Complaint:¹⁵⁸

¹⁵⁶ Statement to RCMP by A. Sarsons, October 12, 2017; (Document 125), October 13, 2017 Memo to RCMP from A. Sarsons (Investigation Document 124).

¹⁵⁷ Transcript of Discussion – Coral Atkinson, community meeting Transcript of Discussion – Coral Atkinson, community meeting, June 24, 2016 (Investigation Document 60C).

¹⁵⁸ Note: The Formal Complaint contains numerous allegations, including identifying specific statements allegedly made. Rather than address each specific statement and allegation, we have identified the three main components of

- 1) The Band Administration’s handling of the Allegations of Wrongdoing was not impartial, in particular:
 - a. Chief Pollard and the Band Manager “inserted themselves” into the matter from the outset and the lawyers involved took instructions only from them; and
 - b. Ms. Spooner was “repeatedly ignored” by the Band Administration, despite her numerous attempts to provide new evidence;¹⁵⁹
- 2) Chief Pollard and the Band Manager publicly misrepresented the investigations into Allegations of Wrongdoing when they were “neither thorough nor independent”¹⁶⁰ and made statements to justify the adequacy of the investigations that were untrue including by:
 - a. Undermining the credibility of Ms. Spooner by suggesting she was a “disgruntled ex-wife”;¹⁶¹ and
 - b. Justifying the Administration’s conclusions, by erroneously stating that Mr. Price worked for the Campbell River Storm hockey team or was permitted to work pursuant to WWK moonlighting policies;¹⁶²
- 3) In the face of growing community concern about the handling of the Allegations of Wrongdoing, the Band Administration spread disinformation in the community by telling members they “could be sued” for defaming Mr. Price.¹⁶³

Each complaint is considered below.

the Formal Complaint and considered all of the allegations even if the specific statement alleged is not outlined in this section of the Report.

¹⁵⁹ Schedule 2 and 3 of the Formal Complaint alleges that the Band Manager and Chief Pollard failed to follow-up with Linda Spooner about her allegations, despite Ms. Spooner’s numerous attempts to provide information. The Complainants allege that despite Ms. Spooner’s “numerous attempts to provide Council with evidence” she was “repeatedly told the issue was completed and there was no wrongdoing on Jason’s part.” The Formal Complaint also states that “Linda is not contacted, the vast amounts of evidence and her knowledge of the situation is not followed up on by the Band manager or chief Pollard and this is somehow attributed to Linda’s [sic] being a disgruntled wife and so forth”.

¹⁶⁰ Schedule 3 of the Formal Complaint alleges that the Band Administration made “misrepresentations”, characterized as giving a false or misleading account of the nature of something, including that: “A thorough investigation was concluded regarding Jason’s conduct”; and “The investigation of Jason’s conduct was independent”. The Formal Complaint also alleges that the Band misrepresented that “INAC found no wrongdoing”.

¹⁶¹ Schedule 3 of the Formal Complaint alleges that the Band provided membership with “disinformation”, which is characterized as information spread to deceive, including that: “Linda Spooner is a disgruntled wife”; “Linda Spooner was to follow up with CRIB but never did”; and “Linda Spooner has retracted or changed her story”.

¹⁶² Schedule 3 of the Formal Complaint alleges that the Band provided membership with “disinformation”, which is characterized as information spread to deceive, including that: “Jason worked on the Storm website”.

¹⁶³ Schedule 2 of the Formal Complaint.

B. DID CHIEF POLLARD AND THE BAND MANAGER “INSERT THEMSELVES” INTO THE INVESTIGATIONS?

The Formal Complaint is that the various investigations were not impartial, in part because Chief Pollard and the Band Manager “inserted themselves” into the matter from the outset.

1. The March 2016 Investigation

(a) *Overview of the Facts*

Evidence on what, exactly, happened during March 2016 is limited, in part because the Band Manager was unable to provide any emails from that period and Council discussions were in-camera. The available evidence shows that:

- There was no clear policy or procedure established for the investigation;
- Chief Pollard was involved in the investigation, even though the Band Manager told WWK Council that the investigation was under her “jurisdiction”;
- The extent of Chief Pollard’s involvement is unclear. At a minimum Chief Pollard:
 - Notified Jason Price of the Allegations of Wrongdoing on March 1, 2016, less than two hours after they were received;
 - Advised Mr. Price that an investigation would be conducted;
 - Corresponded directly with both Kevin Spooner’s lawyer and Band lawyer Jack Woodward regarding the investigation; and
 - Interviewed Kevin Spooner;
- The investigation was closed and Mr. Price was invited to return to work on March 16, 2016, before lawyer Jack Woodward endorsed Ms. Sarsons’ report and before WWK Council was notified or consulted on the results;
- Ms. Sarsons advised WWK Council that when the investigation was complete she would discuss her findings and “what needs to happen” with Council. The investigation was closed five days before Ms. Sarsons notified WWK Council or presented her findings on March 21, 2016; and
- When Councillors Atkinson and Roberts requested a second, independent investigation, Chief Pollard personally denied the request. There is no evidence this was discussed with, or approved by, Council.

(b) Chronology

The Allegations of Wrongdoing were received on March 1, 2016. Within two hours of receiving Ms. Spooner's email, Chief Pollard had forwarded it to Jason Price.¹⁶⁴

Council met on March 7, 2016 but the record does not indicate whether the Allegations of Wrongdoing were discussed.¹⁶⁵

On March 8, 2016 Ms. Sarsons advised Mr. Price by letter, cc'ing members of council, that an independent investigation was required "to address the serious allegations made against you".¹⁶⁶ The next afternoon Ms. Sarsons told Council that Chief Pollard met with Mr. Price and contacted "legal representation to guide the process".¹⁶⁷ Councillor Dana Roberts asked for specifics about the scope of the investigation, including who was conducting the investigation and what policy and procedures were guiding the investigation.¹⁶⁸ Councillor Roberts did not receive a written response.

According to a letter from Kevin Spooner's lawyer, Mr. McPhee, Chief Pollard spoke directly with Mr. McPhee on March 8, 2016 about the investigation including the Chief's requests to interview Mr. Spooner.¹⁶⁹ Kevin Spooner was interviewed on March 10, 2016 by Chief Pollard and the Band Manager.

On March 13, 2016 Councillor Marian Atkinson emailed Ms. Sarsons and members of council after learning about the March 10, 2016 interview. Amongst other things, Councillor Atkinson asked "who is investigating this case? [...] Going forward, I would like to be informed and part of all information and meetings relating to this serious situation."¹⁷⁰

The Band Manager's notes say that she spoke "Dana, Prilla, Marian and Shelly [...] about impartiality, concept of innocent till proven guilty, unbiased process, and protocol" on March 14, 2016.

On March 14, 2016 the Band Manager emailed WWK Council about "the sensitivity and gravity of the allegation towards Jason", clarifying that "this matter is under my jurisdiction as your Band Manager. I am the one leading the investigation by gathering input and interviewing all individuals involved. This process is still underway and I am hoping to have a conclusion (with

¹⁶⁴ Email re: K&L Spooner Construction Ltd. Advisory Memo (Appendix B, Document 33).

¹⁶⁵ March 7, 2016, Wei Wai Kum First Nation Meeting of Council - Council Minutes (Document 34A).

¹⁶⁶ March 8, 2016, letter re: Independent Investigation against Jason Price addressing Allegations made by Linda Spooner (Appendix B, Document 35).

¹⁶⁷ March 9, 2016, email re: Update on Jason Price matter (Appendix B, Document 40).

¹⁶⁸ March 9, 2016, email chain re: update on K&L Spooner Construction Ltd. Advisory Memo and Jason Price matter (Appendix B, Document 40A).

¹⁶⁹ March 8, 2016, letter re: Spooner and Spooner and call with Chief Pollard (Appendix B, Document 39).

¹⁷⁰ March 13, 2016, email re: Informed (Appendix B, Document 43).

legal review) by this Thursday.”¹⁷¹ The email also advised that Ms. Sarsons was dealing with this as “a staffing issue” and that Chief Pollard was acting as “witness”. It concluded:

Once I have concluded my investigation, I shall meet with all of you as a ‘whole’ and in Council Chambers to discuss my findings and what needs to happen.

On March 16, 2016 Ms. Sarsons welcomes Mr. Price to return to work and advises that the investigation is done. The letter cc’d Chief Pollard, but not the remainder of Council.¹⁷²

On March 17, 2016 Jack Woodward wrote to Chief Pollard, providing a “review of the internal procedure regarding allegations by Linda Spooner” (attached as **Appendix O** to this Report)¹⁷³ The letter says: “the process adopted by Angie and Chief Pollard was very good”, but notes Ms. Sarsons only considered Mr. Price’s role as an employee, and not as a Councillor.

On March 21, 2016 WWK Council met and discussed, amongst other things, “Staffing (In-Camera)”. A note from Ms. Sarsons reads: “This is the Council meeting where I provided my findings and letter from Jack Woodward [...] Council voted in favour of accepting my findings. 2 counsellors Marian Atkinson and Dana Roberts did not [... text cut off]”.¹⁷⁴

On March 22, 2016 Councillors Marian Atkinson and Dana Roberts requested an outside investigation into the Allegations of Wrongdoing. Chief Pollard writes back on March 23, 2016 stating that Mr. Woodward’s letter “was prepared for the band as an outside investigation into the matter. Mr. Woodward looked at all the evidence and concluded that there was no wrongdoing. In addition we consulted with Sam Gordon, a lawyer who has done work for our First Nation.”¹⁷⁵ The letter went on to advise that “An external investigation has taken place, and I am sorry that you are not satisfied with the result.”

(c) Roles of Chief, Council and the Band Manager

When interviewed in December 2017, Ms. Sarsons explained how Chief Pollard was her direct supervisor and Council gives her direction on action items at meetings. She also advised that the scope of her investigation was limited based on instructions from legal counsel Sam Gordon and Jack Woodward. She advised that Chief Pollard arranged a meeting with Kevin Spooner during the March 2016 investigation. When asked for emails from March 2016, Ms. Sarsons advised that she no longer had access to them.

Acting Chief Curtis Wilson advised that the Band Manager and Chief typically give instructions to legal counsel, and that council is not involved.

¹⁷¹ March 14, 2016, email chain re: update on K&L Spooner Construction Ltd. Advisory Memo and Jason Price matter (Appendix B, Document 47A).

¹⁷² March 16, 2016, letter re: Internal Investigation into Allegations by Linda Spooner (Appendix B, Document 51).

¹⁷³ March 17, 2016, letter re: Review of internal procedure regarding allegations by Linda Spooner (Appendix B, Document 54).

¹⁷⁴ March 21, 2016, Wei Wai Kum First Nation Meeting Agenda (Appendix B, Document 56).

¹⁷⁵ March 23, 2016, letter re: Jason Price Investigation (Appendix B, Document 58).

Councillors interviewed in December 2017 had difficulty recalling the details of the March 2016 council meetings and couldn't remember if they had seen the Band Manager's report (though they did see Mr. Woodward's letter, briefly).

When asked about her objection to the Band Manager's investigation Councillor Atkinson explained that because Mr. Price "was basically Angie's boss" it didn't seem independent. She was also concerned because Chief Pollard was Ms. Sarsons' main boss and he "runs the ship". Councillor Atkinson explained that Chief Pollard's general approach is that he has final say on all WWK matters. Other Councillors expressed concern with Chief Pollard's management style.

(d) Analysis and Findings

There is no question that Chief Pollard was directly involved in responding to the Allegations of Wrongdoing. On March 1, 2016 – before any steps had been taken to discuss the matter with WWK Council or the Band Manager – Chief Pollard had already notified Mr. Price of the allegations by email. He then initiated an internal investigation, to be undertaken by Band Manager Sarsons.

Concerns about Ms. Sarsons' independence are legitimate. A reasonable person might be concerned that Ms. Sarsons was vulnerable to Chief Pollard's influence – he had control over her employment security, remuneration and work. While the Band Manager advised WWK Council that an investigation was being conducted under "her jurisdiction" Chief Pollard was certainly involved, arranging and participating in key interviews and instructing legal counsel.

While some WWK Councillors were invited to observe some of the Band Manager's interviews, WWK Council appears to have been in the dark regarding the investigation, and may not have even seen the Band Manger's March 2016 report.

Questions from WWK Councillors regarding the policy and procedure guiding the investigation were responded to vaguely and instructions from Council on how to handle the matter do not appear to have been sought. In fact, the investigation was closed and Mr. Price was invited to return to work before WWK Council had been notified of the Band Manager's findings on March 21, 2016. When Councillors raised concerns about the adequacy of the investigation, Chief Pollard rejected requests for an independent investigation and falsely stated that an "external investigation" had taken place. There is no indication Chief Pollard's position was approved by, or discussed with, WWK Council.

Conclusion: There is merit to the complaint that Chief Pollard inserted himself into the investigation from the outset. Neither Chief Pollard nor the Band Manger adequately consulted or involved WWK Council regarding their response to the Allegations of Wrongdoing or the outcome of the Band Manager's investigation.

2. The INAC Investigation

(a) Facts

In July 2016 INAC contacted Chief Pollard about an investigation into the Jason Price matter.

On July 8, 2016 Chief Pollard contacted lawyer Jack Woodward and instructed him: “if he can give them “a little bit”, some little thing, orally that would help them [INAC] close their file, to do so.”¹⁷⁶

In the following weeks and months Chief Pollard, WWK’s lawyers and Mr. Price’s lawyer discussed the scope of the INAC investigation, including how it oversteps INAC’s own policy.

On January 13, 2017 INAC provided Chief Pollard and the Band Manager with a “Fact Verification Report” that reviews the kick-back allegations.¹⁷⁷

On January 25, 2017 Chief Pollard wrote to INAC regarding their “Fact Verification Report”.¹⁷⁸ Chief Pollard’s letter takes issue with several points in, or omitted from, the report. The overall thrust of the letter appears to be directed at the protection of Jason Price. Amongst other things, the letter contains a misleading statement respecting the notice given to Jason Price about the allegations against him:

When I, Chief Robert Pollard, first became aware of these allegations, Jason Price was out of town. Without giving any indication as to the reason I instructed Jason to return to Campbell River and immediately attend my office. Upon his arrival I immediately confiscated his building keys and work-provided cellphone and placed him on a leave of absence to allow Angie Fontaine, Band Manager, to conduct an investigation. Jason did not have the opportunity to access his office, work computer or cellphone prior to the initiation of this leave of absence nor during Angie Fontaine’s subsequent investigation.¹⁷⁹ [emphasis added]

This paragraph is demonstrably false, as the evidence establishes that Chief Pollard received an email from Linda Spooner on March 1 at 10:18 a.m. in the morning, alleging wrongdoing by Jason Price, and within 2 hours, forwarded that email to Jason Price, at 12:12 March 1, 2016.

Jason Price was not placed on a leave of absence until the morning of March 8, a week later.

Chief Pollard’s January 25, 2017 letter also states that:

During the Band’s initial investigation and during INAC’s subsequent investigation Jason explained that he was contracted by K&L Spooner to provide technical services for K&L Spooner and marketing services for a local hockey team called the Campbell River Storm. The hockey team is owned by the proprietors of K&L Spooner. All funds that

¹⁷⁶ August 18, 2016, Jack Woodward, Q.C. Invoice re: Alleged conflict against band member and Councillor, at pg. 2 (Appendix B, Document 65).

¹⁷⁷ January 13, 2017, letter from INAC to Chief Robert Pollard re: Request for fact validation; also see: Doc 78-1 November 15, 2016 INAC WWK Fact Verification Report (Appendix B, Document 78).

¹⁷⁸ January 25, 2017, letter re: Wei Wai Kum First Nation Fact Verification Report Dated January 13, 2017 (Appendix B, Document 80).

¹⁷⁹ January 25, 2017, letter re: Wei Wai Kum First Nation Fact Verification Report Dated January 13, 2017 (Appendix B, Document 80).

Jason received from K&L Spooner were payment for the contracting services that he provided.¹⁸⁰

When asked about the January 25, 2017 letter in December 2017, Chief Pollard advised that the letter had been “brought to me to sign” and that questions should be directed at the Band Manager.¹⁸¹ However, on January 17, 2017 lawyer Sam Gordon emailed Chief Pollard further to telephone call on January 16, outlining errors in the INAC Fact Verification Report and additional information that INAC should have included.¹⁸² This is evidence that Chief Pollard was directly involved in the preparation of the January 25, 2017 letter.

On February 17, 2017, INAC responded to Chief Pollard, stating “the purpose of this letter is to provide an update on the findings and conclusions of the investigation at Wei Wai Kum First Nation after consideration of the information provided in your letter of January 25, 2017...” The letter enclosed a “summary report of our findings” and offered to meet with Chief Pollard and Council to present findings, conclusions, and recommendations.¹⁸³

On February 22, 2017, lawyer Jack Woodward, Q.C., emailed the Band Manager about the Summary Report advising he did not “see any problem with showing the report to the Band membership”.¹⁸⁴

However, the next day, on February 23, 2017 lawyer Sam Gordon emailed the Band Manager saying that Simon Wells (lawyer for Jason Price) “is strongly opposed to having the INAC report shared with anyone”.¹⁸⁵

On February 27, 2017, Jack Woodward again emailed the Band Manager with a cc’ to Chief Pollard, saying that he is in communication with Simon Wells, advising that he was “now changing” (emphasis in original) his previous advice to release the report. Mr. Woodward gave the “new threat of litigation from Simon Wells” as his reason for the change of advice.¹⁸⁶

In May 2017, lawyer Berry Hykin of Woodward & Company LLP became involved in the file on behalf of the WWK, meeting with Chief and Council on May 8, 2017.¹⁸⁷ According to the meeting minutes, Council was informed that:

INAC forwarded its initial report to the Band but that was actually a mistake, as INAC had agreed to send it first to Jason’s lawyer to give him an opportunity to correct any inaccuracies. Berry Hykin explained this would be an expected process due to what is called “procedural fairness”. However, she is puzzled as to why INAC would agree to do

¹⁸⁰ January 25, 2017, letter re: Wei Wai Kum First Nation Fact Verification Report Dated January 13, 2017 (Appendix B, Document 80, pg. 3).

¹⁸¹ December 5, 2017, Interview conducted as part of this Investigation.

¹⁸² January 19, 2017, email re: Jason Price - Request for Fact Validation from INAC (Appendix B, Document 79).

¹⁸³ February 17, 2017, letter re: Management Letter - Investigation at Wei Wai Kum First Nation and enclosing report (Appendix B, Document 85).

¹⁸⁴ February 22, 2017, email re: INAC Summary Report (Appendix B, Document 86).

¹⁸⁵ February 23, 2017, email re: INAC Summary Report (Appendix B, Document 87).

¹⁸⁶ February 27, 2017, email re: INAC Summary Report (Appendix B, Document 88).

¹⁸⁷ May 8, 2017, WWK In-Camera Meeting of Council – Council Minutes (Appendix B, Document 92).

a report in any case as she can't see any authorization for it to investigate either an employee or a councilor when CMHC found no irregularities and when the Band has its own Land Code.

Council directed Ms. Hykin "to follow up with INAC to find what legislative authority provides the grounds for their investigation."

On May 17, 2017, at the direction of WWK Council, Ms. Hykin wrote to INAC respecting the investigation. Ms. Hykin expressed concern about the report:

As discussed, it is my opinion that the document contains serious deficiencies which are problematic for the individual under investigation, Mr. Jason Price, and, more importantly, problematic for the First Nation. We have been advised by Mr. Price's legal counsel that should any part of the report be made public, he will sue for defamation.

Ms. Hykin's letter asserts that INAC was exceeding its jurisdiction in drafting the report. She states:

Specifically, that INAC's authority to investigate allegations and complaints is with respect to misuse of funding provided by INAC and extends no further than that. The current perception of the INAC investigation both within the Wei Wai Kum community, and in the public at large, is that it is a comprehensive investigation into all aspects of this matter. INAC does not have that authority and that must be set out clearly in the Report. (underlining by Ms. Hykin)

She urged INAC to review and revise the report.¹⁸⁸

On June 13, 2017, INAC responded to Ms. Hykin: "we have considered your comments and are finalizing a revised summary report which will be shared with the Chief once completed".¹⁸⁹

On July 17, 2017 a number of community members attended a Council meeting with questions regarding the Jason Price matter. According to the meeting transcript provided by Ms. Roberts, Council advised that they had not yet seen the INAC report, as a draft was being reviewed by legal counsel to ensure the Band was protected from "any kind of lawsuit" and because of questions about its "comprehensiveness".¹⁹⁰ Council indicated that they hadn't seen the report, but that a "final version may be sent to Council within a week."

On or about July 20, 2017 INAC provided a revised "Summary Report" (attached as **Appendix Q** to this Report).¹⁹¹ Also on July 20, 2017, Ms. Hykin emailed Chief Robert Pollard, Councillor Curtis Wilson and Band Manager Angie Sarsons advising she had received the revised INAC

¹⁸⁸ May 17, 2017, letter re: Investigation into Wei Wai Kum First Nation (Appendix B, Document 85).

¹⁸⁹ July 7, 2017, email re: Wei Wai Kum First Nation - Investigation - Update from INAC (Appendix B, Document 103).

¹⁹⁰ July 17, 2017, Transcript of July 17 Public Presentation to Council (Appendix B, Document 104A, pg. 4).

¹⁹¹ July 20, 2017, Wei Wai Kum First Nation - Summary Report (Appendix B, Document 106).

report and had forwarded the revised report to Simon Wells, Jason Price's lawyer, with her request for his approval to release the report.¹⁹²

Between July 25-27, 2017, Ms. Hykin and Simon Wells exchanged emails respecting the potential release of the Summary Report.¹⁹³

On July 28, 2017, Ms. Hykin emailed Band Manager Angie Sarsons to advise that Simon Wells has confirmed it is okay to release the Summary Report to the Council.¹⁹⁴ In an August 1, 2017 follow up email, Ms. Hykin confirmed that Simon Wells' approval is a release to Council only, not publicly.¹⁹⁵

On August 15, 2017 Ms. Hykin emailed Councillor Curtis Wilson to advise that Jason Price has consented to the release of the Summary Report. Her email advised that Councillors and employees should be very cautious about comments on the report due to the potential for litigation.¹⁹⁶

(b) Analysis and Finding

Chief Pollard took steps to undermine the INAC investigation with the assistance of legal counsel without the apparent knowledge of, or instructions from, WWK Council.

As a result of steps taken by the WWK Administration, INAC's findings were significantly restricted. The February 17, 2017 Fact Verification Report concluded:

There is sufficient evidence to show that the Counsellor [sic] and Lands, Housing and Public Works Administrator, received payments from K&L Spooner.

Being paid for capacity building and consulting services by a firm, that has building and renovation contracts with the First Nation, while fulfilling duties as a band councillor and an employee responsible for Lands, Housing and Public Works Administration has, at the least, an appearance of a conflict of interests and thus is a contravention of the Band's policies and procedures.¹⁹⁷

However, after several months of pressure from the WWK Administration the INAC report concluded that while Mr. Price had received \$23,900 in payments from K&L Ltd., "[w]e did not

¹⁹² July 20, 2017, email re: Update on Jason Price matter (Appendix B, Document 105).

¹⁹³ July 25, 2017, email re: Further Comments on the Revised Summary Report Campbell River (Appendix B, Document 110); July 25, 2017, email re: Further Comments on the Revised Summary Report Campbell River (Appendix B, Document 111); July 27, 2017, email re: Campbell River Summary Report - Draft Response to Berry Hykin (Appendix B, Document 112).

¹⁹⁴ July 28, 2017, email re: Campbell River Summary Report - Draft Response to Berry Hykin (Appendix B, Document 114).

¹⁹⁵ August 1, 2017, email re: Campbell River Summary Report - Draft Response to Berry Hykin (Appendix B, Document 116).

¹⁹⁶ August 15, 2017 email re: Waiver from Simon Wells on Behalf of Jason Price (Appendix B, Document 117).

¹⁹⁷ February 17, 2017, WWK Fact Verification Report (Appendix B, Document 85-1).

find that INAC funding, provided for housing construction and renovation projects, which were completed by K&L Spooner, was misused or misappropriated.”¹⁹⁸

Chief Pollard had full knowledge that he had taken concrete steps to restrict the INAC investigation, including, but not limited to, writing to INAC on January 25, 2017 and providing demonstrably false information (e.g., regarding the notice provided to Mr. Price of the allegations) and supporting Mr. Price’s “innocent explanation” that was of questionable reliability.

The extent to which the Band Manager was aware of the steps taken to minimize the findings of the INAC report are unclear. At a minimum, Ms. Sarsons was aware of steps taken by Ms. Hykin to reduce the scope of the INAC report and Ms. Sarsons should have been aware of Chief Pollard’s instructions to Mr. Woodward to work with Mr. Wells regarding the same.

Conclusion: There is merit to the complaint that Chief Pollard inserted himself into the INAC investigation.

C. DID WWK REPEATEDLY IGNORE MS. SPOONER?

The Formal Complaint alleges that Linda Spooner was “never afforded an opportunity to provide council with the evidence she holds” and that Chief Pollard and the Band Manager failed to follow-up with Linda Spooner about her allegations, despite Ms. Spooner’s “numerous attempts” to provide evidence. The Formal Complaint further alleges that Ms. Spooner was “repeatedly told the issue was completed and there was no wrongdoing on Jason’s part.”¹⁹⁹

1. Facts

Between March 1 and April 5, 2016, the Band Manager and Ms. Spooner met on three occasions and exchanged several emails.²⁰⁰ By early April, Ms. Spooner advised that she was “still waiting for the 2015 CR Indian Band job files to be handed over by Kevin. All other files were returned to me, however not one of the approximately 12 CR Indian Band job files were among them.”²⁰¹

The Band Manager advised that she received two packages of material from Ms. Spooner, the first containing a package of cheques and the second containing CMHC related materials. Ms. Sarsons stated that she asked Ms. Spooner to provide any additional material, but that she never received anything further.²⁰²

¹⁹⁸ WWK Summary Report (Appendix B, Document106).

¹⁹⁹ TOR, Formal Complaint, Schedule 2.

²⁰⁰ March 1, 2016, email chain re: K&L Spooner Construction Ltd. Advisory Memo and Jason Price matter (Appendix B, Document 33A), attaching, February 23, 2016, Letter re: Jason Price and K&L Construction Ltd. (Appendix B, Document 30); March 15, 2016, email re: K&L Spooner and Jason Price delivering documents; Also see Document 48A, March 15, 2016, email chain re: K&L Spooner and arranging meeting (Appendix B, Document 49); April 6, 2016, email re: K&L Spooner Update (Appendix B, Document 60).

²⁰¹ April 6, 2016, email re: K&L Spooner Update (Appendix B, Document 60).

²⁰² Interview, December 5, 2017.

In February 2017 Ms. Spooner contacted WWK regarding a purportedly outstanding K&L Ltd. invoice for renovation of the Kwanwatsi Day Care for \$100,000, and enclosed a letter advising that she had located “much more evidence that I believe you had [sic] no interest in seeing.”²⁰³ The letter did not specify what the additional information was, but did confirm she had still not received Kevin Spooner’s additional WWK files.

On May 9, 2017 Ms. Spooner emailed WWK with an excerpt from Kevin Spooner’s February 2016, affidavit,²⁰⁴ highlighting that paragraph 53 of the Affidavit states:

Jason Price is a long time client of the construction company. I have paid Jason Price in the past to find contracts for me. It is not a kick back and is all on the “up and up”. He has invoiced me for his services. It is not unusual and is called “capacity building” – where you get people to source work or develop work for you. The claimant [Ms. Spooner] would have been aware of this as she was supposedly on top of the invoicing etc at the time.” [Ms. Spooner advised that she took over invoicing in March 2016].²⁰⁵

While this affidavit was referred to in Ms. Spooner’s March 1, 2016 email to WWK, the affidavit had not been provided to, or requested by, the Band Manager.

Ms. Spooner’s May 9, 2017 email goes on: “there are other court documents over the past year in which he admits to paying Jason Price capacity building fees as well.” Ms. Spooner then explains that “All my files are available to anyone upon request”. Ms. Spooner followed up by email on July 5, 2017, writing to the WWK Chief, Councillor and Band Manager in “response to the total lack of response” to her May 9, 2017 email, again highlighting the importance of Kevin Spooner’s February 2016 affidavit and questioning the adequacy of the Band’s investigation.²⁰⁶

On July 7, 2017 Ms. Sarsons responded by letter, thanking Ms. Spooner for her ongoing interest and “willingness to be forthcoming with information” and advising that “We are satisfied that the investigation has been conducted thoroughly and no wrongdoing as found”.²⁰⁷

This letter was based on a draft prepared by the Band’s lawyer, but excluded a paragraph proposed by Ms. Hykin that stated:

Of course, we want to be careful not to draw conclusions on incomplete information. Therefore, if you have additional information that you think may be relevant and that has not been previously shared, I hope you will send it along. We would then review it and

²⁰³ February 8, 2017, letter re: outstanding invoice for renovations of Kwanwatsi Day Care (Appendix B, Document 82).

²⁰⁴ The affidavit was referred to, but not attached, in Ms. Spooner’s March 1, 2016 email to WWK (Appendix B, Document 33).

²⁰⁵ May 9, 2017, email from Linda Spooner re: Jason Price and K&L Spooner enclosing Affidavit of Kevin Spooner and enclosed Affidavit (Appendix B, Documents 94 and 94-1).

²⁰⁶ July 6, 2017, email re: Jason Price and Kevin Spooner, K&L Spooner Construction Investigation and Day Care Renovation Project (Appendix B, Document 101B).

²⁰⁷ July 7, 2017, letter re: email received from Linda Spooner on July 6, 2017 response (Appendix B, Document 102A).

consider whether it warrants a reopening of the investigation. If not, this matter is considered resolved and the investigation file closed.²⁰⁸

There is no explanation why this this proposed paragraph was removed from Ms. Sarsons' letter to Ms. Spooner. The draft letter prepared by Ms. Hykin was not shared with WWK Council, but was emailed to Curtis Wilson on July 6, 2017, with a cc' to Chief Pollard.²⁰⁹ After the letter was sent to Linda Spooner the remainder of WWK Council was notified.²¹⁰

2. Analysis and Findings

There is no evidence that Ms. Spooner made attempts to provide WWK with evidence that was rejected during 2016, however, as outlined in Part IX of this Report, the Band Manager failed to diligently follow-up with Ms. Spooner, most notably never requesting a copy of Mr. Spooner's affidavit referred to in the March 1, 2016 email.

The complaint that the WWK Administration "repeatedly ignored" Ms. Spooner has some merit, but only to the extent that the Band Administration should have maintained an open mind to the receipt, and evaluation, of evidence. By mid-2017, the WWK Administration had closed its mind to Ms. Spooner as demonstrated by the decision not to invite Ms. Spooner to provide additional information not already provided to WWK in the July 7, 2017 letter. Ms. Sarsons' response to Ms. Spooner's May 2017 email also indicates that Ms. Sarsons was not taking a proactive approach to the consideration of new evidence, failing to ask what additional "court documents" Ms. Spooner referred to in her May 9, 2017 email.

WWK should have considered any additional evidence with an open mind, as recommended by WWK's legal counsel Ms. Hykin and in accordance with the WWK Administration's overarching obligation to act in WWK membership's best interests.

Despite these failings, Ms. Sarsons was justified in having some skepticism of Ms. Spooner. When interviewed in December 2017, a former employee of K&L Ltd. advised that Ms. Spooner was suspicious of Mr. Price's work for the K&L Ltd. as early as August or September 2015, which contradicts Ms. Spooner's evidence that she first became suspicious of the situation in mid-February, following a call from Mr. Price. Further, Ms. Spooner's communications with WWK appear to correspond with her own interests – including divorce proceedings in March 2016 and seeking payment of a \$100,000 invoice in February 2017.

Conclusion: There is merit to the complaint, but only to the extent that the WWK Band Administration had closed its mind to new evidence by 2017 and failed to advise Ms. Spooner that it was willing to consider new evidence that was not already provided.

²⁰⁸ July 6, 2017, email re: Jason Price and Kevin Spooner, K&L Spooner Construction Investigation and Day Care Renovation Project (Appendix B, Document 101B).

²⁰⁹ July 6, 2017, email re: Jason Price Kevin Spooner matter and Berry's response to Linda Spooner letter (Appendix B, Document 99).

²¹⁰ July 7, 2017, email re: Response to Linda Spooner regarding her recent email (Appendix B, Document 102).

The complaint that Ms. Spooner made numerous attempts to provide Council with evidence and was ignored is without merit as the Band Manager had previously advised that the matter was under her “jurisdiction” and attempts by Councillors Atkinson and Roberts to question the adequacy of the investigations had been rebuffed by Chief Pollard.²¹¹

The complaint that WWK acted inappropriately in failing to keep Ms. Spooner apprised of the status of investigations into the Allegations of Wrongdoing is also without merit. WWK had no obligation to share the various reports prepared regarding Jason Price with Ms. Spooner, explain the basis or evidence for the Band’s conclusions, or advise Ms. Spooner of the status of the investigations. This is because Ms. Spooner is not a WWK member and the Band had no obligation to respond to her.

D. DID WWK MISREPRESENT THE INVESTIGATIONS TO WWK MEMBERS?

The Formal Complaint alleges that the Band Administration misrepresented the extent, thoroughness and independence of the investigations into the Allegations of Wrongdoing.

1. Information Shared with WWK Membership

Chief Pollard and Band Manager Sarsons provided information regarding the various investigations, and WWK’s response to the Allegations of Wrongdoing, on several occasions:

- In a March 23, 2016 letter to Councillors Dana Roberts and Marian Atkinson, Chief Pollard advised that he rejects their requests for an independent investigation, advising that an “external investigation has taken place”.²¹²
- At a June 24, 2016 Information Session Chief Pollard advised:
 - That WWK “hired a lawyer, not one lawyer, two lawyers. They came and did an overview of what we thought we had and they went forward and both the lawyers came back at the end of the day. [...] It was border-line what he [Mr. Price] did, I’ll tell you that.”;²¹³ and
 - Relying on INAC (which was later corrected to be CMHC) and WWK lawyers, Chief Pollard asserted that “There is no crookedness, no nothing. All the dollar figures match and then we did a Council thing with the lawyers, plus the housing, the lawyers said no. Anybody can moonlight.”²¹⁴
- On June 29, 2016 Chief Pollard wrote to WWK membership to advise that:

²¹¹ March 24, 2016, email from A. Sarsons to WWK Council re: KL Spooner/Jason Price (Appendix B, Document 45).

²¹² March 23, 2016, letter from Chief Pollard to Councillors Atkinson and Roberts (Appendix B, Document 58).

²¹³ A footnote in the November 20, 2017 AGM meeting minutes says that this statement “was about how – despite multiple, extensive investigations – no wrongdoing was discovered other than a minor filing irregularity.” Presumably this footnote was added by the Band Manager (see: Appendix B, Document 128B, November 20, 2017 meeting minutes, at pg. 145).

²¹⁴ June 24, 2016, Campbell River Indian Band Information Session (Appendix B, Document 60D, p. 26).

- WWK had completed an “internal investigation, which included conducting in-depth interviews which involved all parties”;²¹⁵ and
- That WWK had sought “two independent legal opinions” which concluded that Mr. Price was not guilty of any wrongdoing.²¹⁶
- On August 24, 2016 Chief Pollard wrote to WWK membership to again advise that:
 - WWK conducted “in-depth interviews” and a “review of internal records”;
 - Legal opinions provided by two lawyers found no wrongdoing by Mr. Price;²¹⁷
 - That CMHC (not INAC, as previously stated) had conducted an audit;²¹⁸
 - He welcomed “the INAC review and any process that will satisfy the parties that the band is operating in a fair and democratic manner and that councillors are fulfilling their role to represent the best interests of the membership as a whole.”²¹⁹
- At the November 2016 AGM, in response to questions from WWK members:
 - The Band Manager spoke about the importance of having “valid proof” before taking any action. She also explained how “when I did my investigation, it should have ended there. But it didn’t, information got out, I don’t know how that happened, but you should have had enough faith to believe that we are taking care of it, which we did. We did take care of it.”²²⁰ Chief Pollard stated that there was a “big report”;²²¹
 - Chief Pollard mentioned that the “Woodward comments” were “sufficient” to answer the petition for Mr. Price’s removal;²²²
 - Chief Pollard suggested that CMHC did a report into the Allegations of Wrongdoing;²²³

²¹⁵ June 29, 2016, letter re: Petition against Jason Price (Appendix B, Document 62).

²¹⁶ June 29, 2016, letter re: Petition against Jason Price ((Appendix B, Document 62).

²¹⁷ August 24, 2016, letter re: Petition to remove Councillor Jason Price (Appendix B, Document 69).

²¹⁸ August 24, 2016, letter re: Petition to remove Councillor Jason Price (Appendix B, Document 69); also see comments in Letter re: Petition against Jason Price., regarding an annual review purportedly conducted by INAC, June 29, 2016, (Appendix B, Document 62). Chief Pollard later corrected this statement to advise he was actually referring to an annual review conducted by CMHC (See: Letter re: Petition to remove Councillor Jason Price, August 24, 2016, Appendix B, Document 69).

²¹⁹ August 24, 2016 letter re: Petition to remove Councillor Jason Price (Appendix B, Document 69).

²²⁰ November 18-19, 2016, AGM meeting transcript of Wei Wai Kum First Nation council members excerpt (Appendix B, Document 78B, pg. 180).

²²¹ November 18-19, 2016, AGM meeting transcript of Wei Wai Kum First Nation council members excerpt (Appendix B, Document 78B, pg. 181).

²²² November 18-19, 2016, AGM meeting transcript of Wei Wai Kum First Nation council members excerpt (Appendix B, Document 78B, pg. 181).

- At the November 2017 AGM the Band Manager advised that:
 - “I’ve done my due diligence in doing a bang-up job of actually investigating ... I’ve gotten compliments from three lawyers and from the criminal investigation.”²²⁴
 - CMHC has a “very strict program” that is “iron clad”;²²⁵
 - INAC conducted an investigation, reviewed a “whole bunch of files” and concluded that “there’s nothing here”;²²⁶ and
 - The RCMP conducted a criminal investigation and they found there “there is nothing”.²²⁷
 - Ms. Hykin, the Band’s lawyer, also relied on advice from the Band Manager that CMHC had conducted an audit into the RRAP program, but no such audit actually occurred.²²⁸

2. Analysis and Findings

Chief Pollard and the Band Manager held out numerous investigations as fully considering and responding to the Allegations of Wrongdoing, despite the fact that some of these investigations never occurred (in the case of the CMCH audit) and that the Chief expressly tried to influence the process (in the case of the INAC investigation).

- Chief Pollard and Band Manager Sarsons appear to have genuinely believed in the validity of Ms. Sarsons’, limited, internal investigation. There is no evidence that they intentionally misled the community in this regard. However, as outlined in Part IX of this Report, the internal investigation was neither thorough nor independent.
- Chief Pollard erroneously stated that WWK had two independent legal opinions that cleared Mr. Price of wrongdoing. At the time of the statements (June and August 2016) only one lawyer Jack Woodward, Q.C., had considered the allegations or the Band’s investigation (lawyer Sam Gordon had only provided advice on employment matters).

²²³ November 18-19, 2016, AGM meeting transcript of Wei Wai Kum First Nation council members excerpt (Appendix B, Document 78B, pg. 64).

²²⁴ November 20, 2017, AGM Meeting Minutes (Appendix B, Document 128B at pg. 141).

²²⁵ AGM Meeting November 20, 2017 - Angie Sarsons - Transcribed Minutes; (Appendix B, Document 128B), AGM Meeting Minutes, November 20, 2017 (Appendix B, Document 128B at pg. 141).

²²⁶ AGM Meeting November 20, 2017 - Angie Sarsons - Transcribed Minutes; (Appendix B, Document 128B), AGM Meeting Minutes, November 20, 2017 (Appendix B, Document 128B at pg. 141).

²²⁷ As noted above, a footnote in the November 20, 2017 meeting minutes continues the misinformation, failing to correct information shared at the June 24, 2016 community meeting and instead stating that multiple, extensive investigations found no wrongdoing despite knowing this was incorrect.

²²⁸ January 8, 2018 email from Ms. Hykin to J. Rich, advising that she had relied on “verbal confirmation” from the Band Manager regarding the CMHC audit, and that the Band Manager has a “strong understanding of how the CMHC reporting works”.

Public statements that WWK had retained two lawyers to consider the matter are incorrect. Chief Pollard either knew, or should have known, this.

- Chief Pollard, and the Band Manager, either knew, or should have known, that CMHC never conducted an audit into the RRAP Program. As a result, they misinformed WWK membership and legal counsel by stating that a CMHC audit had been done into the RRAP program, when there was no audit.²²⁹
- Chief Pollard had full knowledge that he took concrete steps to undermine the INAC investigation, whittling down its scope and findings either directly or with the assistance of lawyers. The extent to which the Band Manager was aware of the steps taken to minimize the findings of the INAC report is unclear. At a minimum, Ms. Sarsons was aware of steps taken by Ms. Hykin to reduce the scope of the INAC report and Ms. Sarsons should have been aware of Chief Pollard’s instructions to Mr. Woodward.
- In November 2017, even after this investigation had commenced, Ms. Sarsons continued to justify the investigations that had been conducted, which she knew or should have known were inadequate, again indicating that she was not impartial. A footnote in the November 20, 2017 AGM meeting minutes repeats the misinformation, stating that Chief Pollard had informed the community in June 2016 that “despite multiple, extensive investigations – no wrongdoing was discovered other than a minor filing irregularity”.²³⁰

Conclusion: There is merit to the complaint that Chief Pollard and the Band Manager misrepresented the extent, thoroughness and independence of the investigations and failed to remain impartial.

E. DID WWK SPREAD DISINFORMATION REGARDING MS. SPOONER?

The Formal Complaint alleges that the Band provided membership with “disinformation”, which is characterized as information spread to deceive, including that “Linda Spooner is a disgruntled wife”.

1. Facts

At a June 24, 2016 WWK Information Seccession, Chief Pollard stated that the Spooners “were going through a nasty divorce [...] They were hiding stuff from each other...”.²³¹

In an October 13, 2017 memo to the RCMP the Band Manager discussed how Mr. Spooner was adamant that he pick-up a cheque from WWK directly “because he did not trust his ex-wife would not cash it and use the funds for her own purpose.” Ms. Sarsons also states that she

²²⁹ Note: Chief Pollard was confused about the difference between the alleged CMHC audit and the INAC investigation, and took steps to address this confusion through an August 24, 2016 letter to WWK membership, however this correction clarified that he had been referring to work done by CMHC, instead of INAC as initially suggested see: August 24, 2016, letter re: Petition to remove Councillor Jason Price (Appendix B, Document 69).

²³⁰ November 20, 2017, AGM Meeting minutes (Appendix B, Document 128B at pg. 145).

²³¹ June 24, 2016, Campbell River Indian Band Information Session (Appendix B, Document 60D, pg. 26-27).

“believes this information is relevant to demonstrating that there were significant issues between Kevin and Linda Spooner, and it puts the accuser – Linda Spooner’s credibility in question.”²³² To our knowledge, this memo has not been shared with membership.

When asked about her skepticism of Ms. Spooner in December 2017, the Band Manager advised that Ms. Spooner had been putting a lot of pressure on WWK community members and upsetting elders. She was also aware that Mr. and Ms. Spooner had financial issues and were using WWK against each other. Her view was that Ms. Spooner was “not all she was cracked up to be”²³³ and advised that she did the best she could with what she had and the procedures that were in place.

2. Analysis and Findings

Communications with WWK membership *implied* that Linda Spooner was unreliable as a result of her divorce proceedings. While this may have been an undercurrent in statements made to the community, I have been unable to find evidence that WWK asserted that Ms. Spooner was a “disgruntled wife” or explicitly undermined her credibility.

There is no evidence of “unwarranted and shameful attacks” on Linda Spooner, as set out in the Formal Complaint.

Internal correspondence indicates that the Band Manager viewed Ms. Spooner as unreliable, as demonstrated by her October 13, 2017 letter to the RCMP.

Both the Chief and Band Manager have an obligation to the WWK membership as a whole. In addition to considering the Allegations of Wrongdoing in a fair and independent manner, WWK Administration should have taken steps to preserve fairness and impartiality, including the appearance of the same. Suggesting that Ms. Spooner is unreliable because of divorce proceedings, but never questioning Mr. Spooner’s reliability on the same grounds, was unreasonable.

F. DID WWK SPREAD MISINFORMATION ABOUT JASON PRICE?

The Formal Complaint alleges that WWK erroneously stated that Mr. Price worked for the Campbell River Storm hockey team and was permitted to work pursuant to WWK moonlighting policies.²³⁴

²³² October 13, 2017, Memo re: Further Information Obtained Regarding the Spooners (Appendix B, Document 125, pg. 2).

²³³ December 5, 2017, Interview.

²³⁴ The Formal Complaint alleges that the Band provided membership with “disinformation”, which is characterized as information spread to deceive, including that:

- “Linda Spooner is a disgruntled wife”;
- “Linda Spooner was to follow up with CRIB but never did”;
- “Linda Spooner has retracted or changed her story”;
- “Jason worked on the Storm website”.

1. Was Misinformation Spread about Jason Price's work for the Campbell River Storm?

(a) Facts

The Band Manager's March 2016 Report (attached as **Appendix N** to this Report) relies in part on an explanation from Mr. Spooner that Mr. Price did "promotion and marketing with the Campbell River Storm hockey team"²³⁵ and an explanation from Mr. Price that "he did moonlight for Kevin (and corroborated the same information shared by Kevin Spooner)."²³⁶

In a January 25, 2017 letter to INAC, Chief Pollard stated:

During the Band's initial investigation and during INAC's subsequent investigation Jason explained that he was contracted by K&L Spooner to provide technical services for K&L Spooner and marketing services for a local hockey team called the Campbell River Storm. The hockey team is owned by the proprietors of K&L Spooner. All funds that Jason received from K&L Spooner were payment for the contracting services that he provided.²³⁷

Similar assertions are in INAC's July 20, 2017 summary report.

Linda Spooner (owner of the Campbell River Storm) advised that Mr. Price had never worked for the team. Similarly, Jami Harrison who has been the team's office manager since 2012 stated that "Mr. Price never worked for the team in any capacity."²³⁸ Wes Roed, of Cogent Technical & Design, who has been providing networking, communications and web design services to both K&L Ltd. and the Campbell River Storm for several years, has no knowledge of any work by Mr. Price for either company and advised he would know about any changes made to the websites by Mr. Price.²³⁹ There is no evidence that Mr. Price was ever paid by the Campbell River Storm for any work, as Mr. Price's invoices were paid by K&L Ltd.²⁴⁰

(b) Analysis & Findings

As discussed in Part IX of this Report, the Band Manager and Chief Pollard accepted Mr. Price's explanation that he worked for K&L Ltd. and the Campbell River Storm without critical

²³⁵ March 16, 2016, WWK Chronology of Events – Independent Investigation In To [sic] Allegations Brought Forward by Linda Spooner in Relation to Jason Price (Appendix B, Document 50, pg. 6).

²³⁶ *Ibid*, pg. 7.

²³⁷ January 25, 2017, letter re: Wei Wai Kum First Nation Fact Verification Report Dated January 13, 2017 (Appendix B, Document 80, pg. 3). Note: When asked about the January 25, 2017 letter, Chief Pollard advised that the letter had been "brought to me to sign" and that questions should be directed at the Band Manager. However, a January 17, 2017, email from lawyer Sam Gordon to Chief Pollard, which Chief Pollard then forward to the Band Manager, is evidence that Chief Pollard was directly involved in the preparation of the January 25, 2017 letter.

²³⁸ January 8, 2018, email from Jami Harris confirming position with Storm hockey team and Jason Price connection with Storm (Appendix B, Document 137).

²³⁹ December 12, 2017, Interview with Wes Roed, Cogent Technical & Design.

²⁴⁰ According to court documents filed during the Spooners' divorce proceedings K&L Spooner Construction and the Campbell River Storm have different bank accounts. The only payments to Mr. Price at issue in the investigation are payments from K&L Spooner Construction.

analysis. However, the evidence is that Mr. Price did not, in fact, work for the Campbell River Storm.

Conclusion: There is some merit to the complaint that WWK (Chief Pollard) spread misinformation regarding Mr. Price’s work for the Campbell River Storm and treated assertions by Jason Price and Kevin Spooner as fact when he ought not to have. However, Chief Pollard relied on statements by Jason Price and Kevin Spooner regarding Mr. Price’s work for the Campbell River Storm and did not intend to deceive WWK Members or INAC in sharing this information.

2. Was Misinformation Spread about WWK’s Moonlighting Policies?

(a) Facts

A moonlighting policy was proposed on March 18, 2016.²⁴¹ WWK’s draft moonlighting policy would apply to employees (and not WWK Councillors) and outlines a procedure for disclosing outside employment and identifying and addressing any potential concerns or complaints.²⁴² The draft policy provides that the “Band Manager should emphasize that it is a serious offence for the employee to accept payment or a benefit based on their decision-making powers within the band. This is particularly important for senior employees and members of council who are also employees.”

At a June 24, 2016 WWK Information Session, in response to questions from Christopher Drake about Jason Price’s involvement with K&L Ltd., Chief Pollard asserted that “Anybody can moonlight.”²⁴³

(b) Analysis and Findings

This investigation is conducted only with respect to Mr. Price’s role as Councillor (not as employee). Given the moonlighting policy applied only to employees, statements made about the policy are beyond the TOR.

G. DID WWK THREATEN MEMBERSHIP WITH LEGAL ACTION?

1. The Allegation

The Formal Complaint alleges that WWK members have been threatened with legal action, as the community was “told it could be sued”.²⁴⁴

²⁴¹ WWK Policy – Outside Employment – Moonlighting, Policy IV-24 (Appendix B, Document 55).

²⁴² March 18, 2016, WWK Policy – Outside Employment Moonlighting Policy No. IV-24 (draft) (Appendix B, Document 55).

²⁴³ June 24, 2016, Campbell River Indian Band Information Session (Appendix B, Document 60D, pg. 26).

²⁴⁴ TOR, Schedule 2.

2. Facts

Invoices indicate that on June 23, 2016 Chief Pollard discussed “what Jason Price can do” to address the Allegations of Wrongdoing, including “a civil suit for defamation”²⁴⁵ with legal counsel.

On June 29, 2016 Chief Pollard wrote to WWK Membership with an “Important Notice”. After discussing the investigations conducted, the notice states:

Making untrue allegations against a person that are harmful to his or her reputation – either in spoken or written form – amounts to defamation. People who participate in defamation can be sued by the person whose reputation was harmed. If the statements in the petition are not true, then people who sign the petition can be sued.²⁴⁶

Invoices indicate that on July 21, 2016 Chief Pollard discussed how Mr. Price is “looking for anything he can find to assist with the defamation lawsuit” with Mr. Wells (Mr. Price’s lawyer).²⁴⁷ On July 27, 2016, on instructions from Chief Pollard, Mr. Woodward and Mr. Wells had a telephone call, which is summarized by invoices as:

Simon [legal counsel for Jason Price] would like the band to release a report specifying the details of why there is an “innocent explanation” (as stated in the letter of March 17, 2016). That report could be heavily redacted, if necessary, but at least it would provide the basis for a credible claim of defamation. At this point Simon thinks that because the allegations are unanswered, the defence of fair comment would likely prevail in any defamation case. This is because Jason is a public official, and the defence of fair comment is stronger in such a case. [...] **Next step:** Meeting set up with Angie to talk about the details of the “innocent explanation”. [underline added]

Mr. Woodward, with instructions from Chief Pollard, sent out the “innocent explanation”.²⁴⁸

When asked about the “innocent explanation”, in December 2017, Chief Pollard and the Band Manager gave conflicting explanations. Chief Pollard said he didn’t know who gave Mr. Woodward instructions but that it must have been the Band Manager. Meanwhile, the Band Manager said she was not involved, but that it was prepared at Chief Pollard’s instructions. Mr. Woodward’s invoices indicate that both Chief Pollard and the Band Manager were involved in preparing the explanation, though Chief Pollard gave the final instructions to send it out.

An August 25, 2016 “Issue Note”, which appears to be an internal WWK document, identified that a lawsuit from Jason Price was possible. When asked about this note, Chief Pollard advised

²⁴⁵ August 18, 2016, Invoice re: Alleged conflict of interest against Band member and councilor (Appendix B, Document 65).

²⁴⁶ June 29, 2016, letter re: Petition against Jason Price (Appendix B, Document 62).

²⁴⁷ August 18, 2016, Invoice re: Alleged conflict of interest against Band member and councilor (Appendix B, Document 65).

²⁴⁸ August 18, 2016, Invoice re: Alleged conflict of interest against Band member and councilor (Appendix B, Document 65, at pg. 3).

that he didn't recall the document.²⁴⁹ Band Manager Sarsons advised that Chief Pollard had instructed her to work with Mr. Woodward on this document.²⁵⁰

According to meeting minutes provided by both Chris Drake and Coral Atkinson, Chief Pollard discussed his June 29, 2016 letter to the community in response to questions from Christopher Drake at the November 2016 AGM:

As for the letter that was sent out. Jack Woodward's [sic] drafted that letter and was sending out [sic] but it was going out on band letterhead and he asked me to sign it. In no way was I threatening anybody or stopping, asking them in any capacity not to sign that petition. It was Jack Woodward that said you better warn the community of the repercussions, what could happen of this/that. So them [sic] are his words but because it was on a band letterhead, he asked me to sign with it.²⁵¹

When asked about whether Chief Pollard instructed Mr. Woodward to work with Mr. Wells to create a credible claim for defamation by Mr. Price, Chief Pollard was adamant he would never give instructions for a lawyer to act against the Band's interest and that Mr. Woodward was instructed to tell Mr. Wells what he could or could not disclose.

3. Analysis and Findings

Free expression and debating matters of public interest are fundamental to democracy. These rights are recognized in Canadian constitutional law.²⁵² However, there are some limits on freedom of expression, and it cannot be used as an excuse to "ruin reputations".²⁵³

Threats of defamation law suits should not be used to chill important components of democracy, including freedom of speech and the ability of citizens to criticize their own governments.²⁵⁴ For this reason, the bringing of law suits by Band Councils for defamation by their members is inconsistent with the role as a democratically elected body.²⁵⁵

Significant steps were taken by Chief Pollard or at his direction to make the threat of a defamation law suit from Jason Price real, and ensure WWK membership were aware of it. Importantly:

- Chief Pollard notified membership on June 20, 2016 that members who endorse petitions (that are expressly authorized by the Election Code) were at risk of being sued.

²⁴⁹ December 5, 2017, Interview.

²⁵⁰ December 5, 2017, Interview.

²⁵¹ November 18, 2016, November 18-19, 2016 AGM meeting transcript of Wei Wai Kum First Nation (Appendix B, Document 78A, at pg. 62).

²⁵² *Grant v. Torstar Corp.*, [2009] 3 SCR 640, 2009 SCC 61, at paras 42 to 50.

²⁵³ *Grant v. Torstar Corp.*, [2009] 3 SCR 640, 2009 SCC 61, at para 58.

²⁵⁴ *Wilson v. Switlo*, [2011] B.C.J. No. 1800, 2011 BCSC 1287, at para 129, citing *Dixon v. Powell River (City)*, 2009 BCSC 406.

²⁵⁵ *Wilson v. Switlo*, [2011] B.C.J. No. 1800, 2011 BCSC 1287, at para. 130.

- Chief Pollard wrote to the community about the threat of a lawsuit again on June 29, 2016. This letter may have been drafted by a lawyer, but it was prepared on Chief Pollard’s instructions and ultimately signed by the Chief.
- At Chief Pollard’s direction, Mr. Woodward spoke with Mr. Wells about how an “innocent explanation” for Mr. Price’s conduct, endorsed by WWK, might improve Mr. Price’s ability to sue for defamation. Mr. Woodward subsequently prepared a letter that set out this “innocent explanation” to strengthen Mr. Price’s defamation threat.

The steps taken by Chief Pollard to inform the community of Mr. Price’s alleged defamation claim seem aimed at curtailing the freedom of expression and discussion by WWK members of the Allegations of Wrongdoing. These actions are inconsistent with his role as elected Chief Councillor of WWK.

When asked about this conduct in December 2017, Chief Pollard attempted to blame his lawyers. However, lawyers take instructions from their clients. Further, legal invoices indicate that the threat of a defamation lawsuit was created on Chief Pollard’s instructions as a solution to Jason Price’s “problem” and unrest in the community.

Conclusion: There is merit to this complaint. While WWK never threatened WWK members with a lawsuit, Chief Pollard did tell WWK membership that they could be “sued” for signing the petition. This is inconsistent with Chief Pollard’s role. Chief Pollard should not have attempted to suppress community debate with the threat of a defamation lawsuit from Mr. Price.

PART XI - REMEDIES

A. REMEDY FOR BREACH OF FIDUCIARY DUTY

WWK Council may start a court action against Mr. Price for breach of fiduciary duty and seek an accounting of the benefits Mr. Price received from his undisclosed conflict. Based on the available information, WWK has a claim for \$23,900 (representing Mr. Price’s invoices to K&L Ltd. for “capacity building” and other matters). Subject to receiving a satisfactory explanation from Mr. Price, WWK has an additional potential claim for any benefits he received from K&L Ltd. for labour and materials on his home.²⁵⁶

1. Breach of Duty

As a Councillor, Jason Price owes a fiduciary duty to the WWK.

This investigation has determined that:

- During the years 2013-15, Jason Price had a business relationship with K&L Ltd.;

²⁵⁶ See Part VIII for details on benefits Mr. Price may have received from K&L Ltd.

- Jason Price failed to disclose that business relationship to the Chief, the Council and the Band Administration;
- In the course of the business relationship, Jason Price received the sum of \$23,900.00 from K&L Ltd.;
- There is evidence that Jason Price received other benefits from his business relationship to K&L Ltd. in the form of improvements to his house; and
- It is possible that Jason Price may have explanations to establish that he did not obtain benefits in respect of his house improvements, however, he has not done so to date.

By entering into the business relationship with K&L Ltd., failing to disclose that business relationship, and obtaining benefits through the business relationship, Mr. Price is in breach of his fiduciary duty to WWK.

2. Evidence

The evidence is clear that Mr. Price was paid \$23,900.00 by K&L Ltd.

There is evidence that Mr. Price received benefits from K&L Ltd. in the renovation of his house, although he may have an explanation to establish that he did not benefit in respect of his house renovations and thus committed no breach. Given his undisclosed conflict of interest, the onus is on him to establish that he did not benefit.

It should be noted that this report, in itself, is not evidence. However, it does point to the sources of evidence which could be used in a proceeding regarding the matters investigated.

3. Remedy

The usual remedy imposed by courts for breach of fiduciary duty is disgorgement of any profits the fiduciary has obtained. Thus, if WWK seeks a remedy in court, the usual remedy would be for the court to order that Mr. Price pay any benefits he has received from his undisclosed relationship with K&L Ltd. to WWK. This would include the \$23,900.00 and the value of any benefits Mr. Price may have obtained in the renovation of his house.

There have been cases where courts have not ordered payment of profits obtained by a breaching fiduciary to a beneficiary. However, such cases appear to be restricted to circumstances where there has been no loss to the beneficiary, and where the conflict of interest was known to the beneficiary. In the present case, there is some question about whether WWK lost on account of Jason Price's breach, since no loss flows from his simple non-disclosure of his conflict of interest. On the other hand, if it is established that K&L Ltd. charged payments made to Jason Price to projects of the Band or Band members, then there has been a loss on account of the breach of duty. Regardless, Jason Price's conflict of interest was not disclosed and not known to WWK Council or Administration so these cases should not apply.

Thus, the weight of authority is that Jason Price should be compelled by a court to pay all benefits he has received from K&L Ltd. to WWK.

In the event that a court were to find that Jason Price received some or all of the \$23,900.00 as “kickbacks”, or that he received a benefit in his house renovation by having materials diverted from other projects, there is no doubt that a court would order repayment to WWK.

As discussed in Parts VII and VIII of this Report, it has not been possible to determine with certainty that Jason Price was involved in wrongful actions in obtaining benefits through his relationship with K&L Ltd. However, on the evidence available, there is the appearance of wrongful benefits, and thus legal principles obligate Jason Price to explain. He has not done so.

4. Liability of K&L Ltd.

Parties who engage with a fiduciary in breach of the fiduciary’s obligations may also be held liable.

In this case there are three ways in which liability may attach to K&L Ltd.:

- Insofar as Jason Price may have received the \$23,900.00 without having provided *bona fide* services to K&L Ltd., which were independent of K&L Ltd. dealings with WWK, K&L Ltd. would have been complicit in Mr. Price’s breach of fiduciary duty.
- In the event that Jason Price received benefits in his house renovation through diversion of materials and labour, K&L Ltd. would have been aware of those diversions and is thus complicit in the breach.
- The evidence shows that K&L Ltd. overcharged on numerous band-related projects and may have relied on a lack of scrutiny on the part of Jason Price.

5. Limitations

All legal claims that can be brought in a court must, in the vast majority of cases, be started within a set period of time, called a “limitation period”. Limitations periods, as provided by the *Limitation Act*, SBC 2012, c. 13 could be a bar to Court action. This issue is beyond the TOR of this investigation. Council should discuss this matter with legal counsel in the event legal action is contemplated.

B. BREACH OF POLICY

1. Breach

In having an undisclosed conflict of interest beginning in at least February 2014, and failing to provide an explanation for receiving payments from K&L Ltd. and apparent benefits in his house renovation from K&L Ltd., Jason Price has:

- (a) Breached the WWK Operations Manual including the WWK Conflict of Interest policy (s. 2.14) and the Code of Ethics (s. 2.15);

- (b) Violated his Contract of Office, sworn on February 19, 2009; and
- (c) Failed to maintain a standard of conduct expected of a member of Council.

2. Arbitration

As a result of these breaches, WWK Council may start removal proceedings under s. 54 of the WWK Election Code. This would require a majority of Council passing a BCR seeking Mr. Price's removal from Council and submitting a petition to an Arbitrator that:

- Identifies the grounds for removal pursuant to s. 54 of the Election Code;
- Encloses evidence in support of the BCR (which may include this Report); and
- Is signed by all Council members who voted for Mr. Price's removal²⁵⁷

Alternatively, the WWK Electorate, through a petition signed by at least 25% of the electors of the Band, could also initiate a removal proceeding.²⁵⁸

In either case, an independent Arbitrator would need to be appointed to conduct a hearing.²⁵⁹

3. Remedy

The Arbitrator would then either dismiss the petition, or rule that Mr. Price is removed from WWK Council.²⁶⁰ The Arbitrator may also declare that Mr. Price is disqualified from being a candidate in a WWK election for a period of up to 6 years from the date of the Arbitrator's ruling.²⁶¹

4. Limitations

There are no limitation issues with respect to the enforcement of WWK policy.

C. REQUEST THAT MR. PRICE RESIGN

WWK Council may ask Mr. Price to resign as Councillor.

In addition to requesting that Mr. Price resign, WWK Council may:

- Ask Mr. Price to repay the \$23,900 obtained from K&L Ltd.; and

²⁵⁷ WWK Election Code, s. 55(b).

²⁵⁸ WWK Election Code, s. 55(a)

²⁵⁹ WWK Election Code, s. 194, 198.

²⁶⁰ WWK Election Code, s. 62.

²⁶¹ WWK Election Code, s. 65.

- Seek Mr. Price’s agreement not to run for WWK Council for up to 6 years.²⁶²

D. WWK COUNCIL MAY CHOOSE TO DO NOTHING

WWK Council has no obligation to take further steps as a result of this Report.

WWK Council alone, or in consultation with membership, may determine that this Report is sufficient to clear the air.

WWK Council may also decide direction or consultation with WWK membership is necessary before taking any action.

WWK Council may also choose to leave it to membership to initiate a petition seeking Mr. Price’s removal from Council.

E. ADOPT AND IMPLEMENT OUR RECOMMENDATIONS

Irrespective of the above options, we recommend that WWK consider adopting and implementing the recommendations outlined below to avoid situations like this in the future. We also recommend that WWK Council communicate directly and clearly with WWK membership regarding this matter.

PART XII - RECOMMENDATIONS

Effective, accountable governance takes hard work and requires taking responsibility for providing effective services and governance. Acting as a Nation also involves accepting responsibility when institutional failures occur and taking steps to ensure the same mistakes are avoided in the future. The recommendations below are provided with the aim of enabling improvement in WWK policies and procedures.

A. DUTIES AND RESPONSIBILITIES OF COUNCIL

1. The WWK Operations Manual contains clear prohibitions against Councillors acting in conflict of interest.²⁶³ Chief and Councillors should strictly adhere to these policies.
2. The WWK Band Manager and Chief should not act without the authority of WWK laws, regulations, policies and direction provided by WWK Council. The Chief Councillor is not authorized to make ad hoc decisions and should show greater adherence to proper administrative procedures and policies. The Band Manager should be aware of, and respect, the Chief Councillor’s jurisdictional limits.

²⁶² The WWK Election Code provides that if a Petition for removal of Office is granted, the Arbitrator “may further declare the Chief or Council removed from office shall be disqualified from being a candidate in an election for a period of up to 6 years commencing on the date of the Arbitrator’s ruling” (WWK Election Code, s. 65).

²⁶³ Effective October 3, 2016 WWK Council has also adopted a Conflict of Interest Policy applicable to Councillors - Conflict of Interest Policy II-07, this policy should also be strictly adhered to.

3. WWK Administration should be committed to transparency and fairness. Where policies and procedures are not in place (for example, regarding the response to an allegation of wrongdoing by an elected Councillor) WWK Council should decide how to proceed in a transparent and fair manner.

B. CLEAR DISTINCTION BETWEEN ROLES OF COUNCILLORS AND WWK EMPLOYEES

1. One of the problems and sources of confusion resulting in this investigation was Mr. Price's dual role as WWK Councillor and employee responsible for housing. As a Councillor, and particularly as the Councillor holding the Housing Portfolio, Mr. Price was responsible for ensuring that the Lands, Housing and Public Works Administrator was performing his duties in the best interests of WWK. As both Councillor and Lands, Housing and Public Works Administrator, Mr. Price was put in an institutional conflict of interest in fulfilling both roles. WWK Council should consider policy options for avoiding institutional conflicts of interest of this nature in the future.

C. IMPROVED RECORD KEEPING

1. It appears that WWK was overcharged for several jobs conducted by K&L Ltd. on reserve. To avoid this in the future, multiple bids should be required for on-reserve jobs with detailed quotes specifying the work to be done.

2. WWK files indicate that insufficient details were provided by K&L Ltd. for the work done on reserve and funded by CMHC or otherwise. WWK should require detailed invoices that specify labour and materials, including for subcontractors, for all work done on reserve.

D. TRANSPARENCY

1. An important component of good governance is transparency, which is built on the free flow of information and community consultation. Transparency also means that processes and information are directly accessible to those concerned and enough information is provided to enable informed participation and engagement. The lack of transparency, or misinformation, regarding the handling of the Allegations of Wrongdoing negatively affected both WWK Council and membership.

2. The WWK Band Manager and Chief should not act without authorization by WWK laws, regulations, policies and direction provided by WWK Council. Full information should be made available to WWK Councillors, including information about the nature of instructions provided to WWK legal counsel.

3. The WWK Band Manager and Chief should make best efforts to provide full information to WWK membership regarding matters of interest to them. Providing information to WWK members about the Allegations of Wrongdoing, how they were investigated and the resulting reports would have enabled WWK membership to understand what was happening (and would have enabled constructive criticism and debate about the handling of the allegations). Rather than attempting to quell community discussion with the threat of litigation WWK should encourage the frank discussion of matters of importance to the community. In this case, attempts to

suppress information about the Allegations of Wrongdoing only served to increase membership's concerns.

PART XIII - APPENDICES

Tab	
A	Investigation Terms of Reference
B	List of Documents Reviewed
C	Correspondence with Lawyer Simon Wells Regarding Scheduling Jason Price Interview
D	Chief and Council Contract of Office, signed by Jason Price February 19, 2009
E	Wei Wai Kum First Nation Operations Manual: Organizational Policies and Procedures, dated October 1, 2012 (Excerpt)
F	Jason Price Invoices and K&L Ltd. Cheques
G	January 29, 2014 K&L Ltd. Invoice to Jason Price Re: Jason's House
H	Excerpt from K&L Ltd. File re: Ollie Henderson (July 5, 2013 Invoice from True Line Fencing)
I	Excerpt from Band File re: Quocksister (March 19, 2015 K&L Ltd. Invoice to Jason Price re: 1444 Drake Rd Quocksister and March 20, 2015 K&L Ltd. Invoice to Jason Price re: 1444 Drake Rd Quocksister)
J	Excerpt from K&L Ltd. File re: Christine Roberts (Nelson Roofing Invoice and resulting K&L Ltd. Invoice)
K	Excerpt from K&L Ltd. file re: Lloyd Henderson (Time sheets, October 9, 2014 Lenz Welding Invoice re: Aluminum Stair Runners and October 3, 2014 Kinetic Powder Coating Ltd. Invoice from Lloyd Henderson Project)
L	Excerpt from Band File re: Maggie Henderson (August 31, 2013 Invoice for aluminum railing; August 6, 2013 Invoice from Upland Ready-Mix)
M	Excerpt from K&L Ltd. File re: Thunderbird Hall flooring
N	March 16, 2016 [Band Manager Investigation Report] Chronology of Events – Independent Investigation into Allegations Brought Forward by Linda Spooner in Relation to Jason Price
O	Mr. Woodward's March 17, 2016 letter re: Review of internal procedure regarding allegations
P	December 2016 emails with Band Manager and enclosed May 30, 2016 letter from CMHC to Chief Pollard and Councillors re: On-Reserve Non Profit Housing Program (NHA Section 95)
Q	July 20, 2017 INAC (revised) Summary Report