



Gerald Gerrand Q.C.  
Conflict of Interest Commissioner

REPORT RESPECTING ALLEGED BREACH BY PREMIER FLOYD ROLAND OF  
SECTION 75 OF THE *LEGISLATIVE ASSEMBLY AND EXECUTIVE COUNCIL ACT*.

By letter of complaint dated February 16, 2009, six members of the Legislative Assembly of the Northwest Territories requested that I carry out a formal investigation and provide a report regarding certain conduct of Floyd Roland, Member of the Legislative Assembly for Inuvik Boot Lake and Premier of the Northwest Territories (Premier Roland).

I view this letter to be a written complaint as described in Section 100 of the *Legislative Assembly and Executive Council Act* (the Act). That section reads as follows:

“100.(1) A member or any other person who believes on reasonable grounds that a member has contravened any provision of this Part may file a written complaint setting out those grounds with the Conflict of Interest Commission.

(2) Notwithstanding subsection (1), the Conflict of Interest Commissioner may receive the oral complaint of a person who is not a member if the Conflict of Interest Commissioner considers it appropriate to do so.”

The letter of complaint signed by the six aforementioned Members of the Legislature reads:

“February 16, 2009

Mr. G.L. Gerrand, Q.C.  
Conflict of Interest Commissioner  
Toronto Dominion Bank Building  
700-1914 Hamilton Street  
Regina, SK S4P 3N6

Dear Mr. Gerrand:



We the undersigned members of the Legislative Assembly are writing to you in the matter of the conduct of Premier Floyd Roland with respect to his duties as Premier.

We learned in mid-December that Mr. Roland was involved in an intimate relationship with a key staff person in the Legislative Assembly.

This staff person had access to all in-camera committee meetings, was the Clerk of the Standing Committee on Economic Development and Infrastructure on Government Operations. As a Table Officer she also had a hand in drafting responses to points of Order and Privilege raised on the floor of the Assembly, some of these rulings involving matters raised by or against Premier Roland.

We question if Mr. Roland had a duty to disclose the nature of this relationship. We also have reason to believe that information discussed in confidence in committee was shared with the Premier. An early disclosure would have enabled an opportunity for action to avoid conflict of interest.

We seek your ruling as to whether the *Legislative Assembly and Executive Council Act* has been breeched (sic) under Section 75, Obligations of Members, 'Each member shall (a) perform his or her duties of office and arrange his or her private affairs in such a manner as to maintain public confidence and trust in the integrity, objectivity and impartiality of the member'. There is also reference to similar commitments in the Code of Conduct for Members which each Member signs when they are sworn into office.

We were surprised to learn of this relationship that had been in progress many months before we heard about it. The Premier had denied any wrongdoing in this matter, stating that this relationship is only relevant to his personal life, not his public duty or life.

We trust that you will consider this complaint and decide if it should be referred for a formal investigation and report. We have no tools at our disposal to investigate the full facts of what transpired and how it affects the integrity of our work as committees and members.

Yours truly,

Glen Abernethy  
MLA Great Slave

Wendy Bisaro  
MLA Frame Lake

Bob Bromley  
MLA Weledeh

Jane Groenewegen  
MLA Hay River South

David Krutko  
MLA Mackenzie Delta

David Ramsy  
MLA Kam Lake"

Following a request by me for further detail respecting the complaint, the six members of the Legislature who had signed the complaint wrote to me as follows by letter dated February 25, 2009:

“February 25, 2009

Mr. G.L. Gerrand, Q.C.  
Conflict of Interest Commissioner  
Toronto Dominion Bank Building  
700-1914 Hamilton Street  
Regina, SK S4P 3N6

Dear Mr. Gerrand:

We, the undersigned, are in receipt of your request for further information.

The name of the staff person, who was the Clerk of two Committees and often attended the Standing Committee on Planning and Priorities, is Patricia Russell.

In Regular Member's Caucus (Priorities and Planning) we are very candid in our discussions on the actions of government. The Chair, Mrs. Groeneweg was vocal early on in the 16<sup>th</sup> Assembly. When the Premier was challenged on directions or lack of communication with regular members, he insisted that the source of the dissatisfaction was being stirred up by two members, including Mrs. Groenewegen. In a specific instance in Caucus Mr. Roland stated that he could not work with the Chair, alleging that she was “filtering communication and screening correspondence” to the committee. This seemed a strange allegation at the time because it is about process that staff would most be atuned to, as opposed to members, Ms. Russell being a key player in the staff compliment.

There were numerous occasions when Mr. Roland took particular aim at Mrs. Groenewegen and Mr. Ramsay. In retrospect, we don't think this was a coincidence because, during meetings of our Standing Committee Priorities and Planning, both of these members were critical of government and the Premier's leadership.

Although these instances are not intended to be exhaustive, we will list a few exchanges.

In one meeting the Premier told Mr. Ramsay that he “has” information on all of us and he will use it.” This threatening demeanour was not uncommon in reference to things he alleged he knew.

On another occasion the Premier told Mr. Abernethy that he “knows everything that's said in that room”, referring to Committee Room A where regular

members meet. He also quoted back to Mr. Abernethy word for word an exchange in the Committee meeting when the performance of Minister Lee was being discussed and Mrs. Groenewegen asked Mr. Ramsay, "do you want her position on Cabinet?"

This repeating of what took place in Committee occurred with other regular members who are not quoted in this letter as they did not decide to participate in filing this complaint. These other incidents that were related to us are available to an investigator through other processes of evidence gathering.

We would like to reiterate that we are interested in a ruling that would determine if a conflict of interest existed by the failure of the Premier to disclose the nature of his relationship with one of our Clerks. We know that the Clerk's Office would not knowingly allow a family member of the Premier or Cabinet Ministers to be hired to work for our committee at the Legislative Assembly.

We hope that this letter addresses your questions.

Glen Abernethy  
MLA Great Slave

Wendy Bisaro  
MLA Frame Lake

Bob Bromley  
MLA Weledeh

Jane Groenewegen  
MLA Hay River South

David Krutko  
MLA Mackenzie Delta

David Ramsy  
MLA Kam Lake"

Notice was given to Premier Roland of the complaint as required by section 101 of the Act.

I have carried out an investigation respecting what I consider to be all relevant factual matters. The investigation included conducting of interviews of individuals at Yellowknife during March, 2009. I interviewed during this period of time the six members of the Legislative Assembly that are signatories to the letter of complaint. As well, I met with and questioned Premier Roland and Ms. Russell in the presence of their counsel. Additionally, I interviewed the three regular members of the Legislative Assembly who were not signatories to the letter of complaint, Mr. Robert Hawkins, Mr. Jackie Jacobson and Mr. Norman Yakeleya. I have interviewed Mr. Tim Mercer, Clerk of the Legislative Assembly, and obtained from him information and documentation relevant to the issue in question and employment particulars of Ms. Russell.

Provision of the Act Allegedly Breached by Premier Roland

Section 75 of the Act, allegedly breached by Premier Roland, reads as follows:

“75. Each member shall:

(a) perform his or her duties of office and arrange his or her private affairs in such a manner as to maintain public confidence and trust in the integrity, objectivity and impartiality of the member;

(b) refrain from accepting any remuneration, gift or benefit the acceptance of which might erode public confidence and trust in the integrity, objectivity or impartiality of the member, and in all other respects act in a manner that will bear the closest public scrutiny;

(c) arrange his or her private affairs in conformity with the provisions of this Part and act generally to prevent any conflict of interest from arising; and

(d) make all reasonable efforts to resolve any conflict of interest that may arise in favour of the public interest.”

The Interpretation of Section 75 (a)

It is essential to determine if events that are the subject of the complaint constitute a potential or actual breach of Section 75(a). Counsel for Premier Roland has submitted that Section 75(a) must be interpreted to mean that a Member is obliged to arrange his or her financial interests in a way which accords with maintenance of public confidence and trust in the integrity, objectivity and impartiality of the Member. Counsel points to sections 75(b), (c) and (d), which refer, in the submission of counsel, to the financial affairs of the Member and submits that if it were intended that Section 75(a) be interpreted with respect to conduct other than financially related conduct, the section would specifically so state.

It is helpful to consider what other Canadian Statutes have employed wording similar to Section 75(a). Very similar wording occurs in the preamble to three Acts. The Ontario *Members' Integrity Act*, 1994, S.O. 1994, c.38, begins with a preamble as follows:

“Preamble

It is desirable to provide greater certainty in the reconciliation of the private interests and public duties of members of the Legislative Assembly, recognizing the following principles:

1. The Assembly as a whole can represent the people of Ontario most effectively if its members have experience and knowledge in relation to many aspects of life in Ontario and if they can continue to be active in their own communities, whether in business, in the practice of a profession or otherwise.
2. Members’ duty to represent their constituents includes broadly representing their constituents’ interest in the Assembly and to the Government of Ontario.
3. Members are expected to perform their duties of office and arrange their private affairs in a manner that promotes public confidence in the integrity of each member, maintains the Assembly’s dignity and justifies the respect in which society holds the Assembly and its members.
4. Members are expected to act with integrity and impartiality that will bear the closest scrutiny.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:” [emphasis added]

The Ontario *Members’ Integrity Act* generally deals with financial conflict of interest. There are no published decisions interpreting this preamble.

In the Alberta *Conflicts of Interest Act*, R.S.A. 2000 c.C-23, very similar wording also occurs in the preamble which reads as follows:

“Preamble

WHEREAS the ethical conduct of elected officials is expected in democracies;

WHEREAS Members of the Legislative Assembly can serve Albertans most effectively if they come from a spectrum of occupations and continue to participate actively in the community;

WHEREAS Members of the Legislative Assembly are expected to perform their duties of office and arrange their private affairs in a manner that promotes public confidence and trust in the integrity of each Member, that maintains the Assembly’s dignity and that justifies the respect in which society holds the Assembly and its Members; and

WHEREAS Members of the Legislative Assembly, in reconciling their duties of office and their private interests, are expected to act with integrity and impartiality:

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:" [emphasis added]

In the Yukon Territories, the *Conflict of Interest (Members and Ministers) Act*, R.S.Y. 2002, c.37, has a similar preamble describing an expectation that members perform duties of office and arrange their private affairs in a way that promotes public confidence. That preamble reads as follows:

"Preamble

Whereas in democracies elected officials are expected to conduct themselves ethically,

Whereas members of the Legislative Assembly are expected to perform their duties of office and arrange their private affairs in a manner that promotes public confidence and trust in each member's integrity, that maintains the Assembly's dignity, and that justifies the respect given by society to the Assembly and its members, and

Whereas members of the Legislative Assembly, in reconciling their duties of office and their private interests, are expected to act with integrity and impartiality,

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:" [emphasis added]

Again, the Yukon *Conflict of Interest Act* deals with the standard financial conflict of interest provisions similar to the equivalent legislation in the provinces. In the Yukon, at Section 14 of the *Conflict of Interest (Members and Ministers) Act*, the government leader is explicitly allowed to make rules of conduct about ethical behaviour and conflict of interest, and that provision of the Act specifically states that ministers are in a conflict of interest if they violate a rule of conduct.

The recent decision of North West Territories Supreme Court Justice Charbonneau in *Villeneuve v. North West Territories (Legislative Assembly)*, [2008] 10 W.W.R. 704, NWTSC), commented at paragraph 39 that the decision by the North West Territories board of management to withhold an allowance Mr. Villeneuve normally would have been entitled to pursuant to the *Legislative*

*Assembly and Executive Council Act*, was a decision that is protected by parliamentary privilege, and therefore beyond the reach of judicial review.

The *Villeneuve* decision, at paragraph 11, makes the following comment on Section 75. That paragraph reads in its entirety:

[11] Section 75 is included in Part III of the Act, which sets out a comprehensive regime for the regulation of conflict of interest for MLAs. It sets out disclosure requirements for MLAs, as well as guidelines as to conduct. It also establishes the process for the enforcement of conflict of interest rules. A complaint against a MLA is, as a first step, investigated by the Conflict of Interest Commissioner (sections 100 and 101). At the conclusion of this investigation, the Commissioner either dismisses the complaint or directs that an inquiry into the matter be held before a Sole Adjudicator (section 102). In the latter situation, the Sole Adjudicator conducts an inquiry and makes findings and, in the case of a finding of guilt, recommendations as to punishment (sections 104 to 106). The findings are tabled in the Legislative Assembly. The Assembly considers the findings and recommendations and decides whether the recommended punishment should be imposed or whether the recommendation should be rejected (section 107).

The interpretation of Section 75 in the *Villeneuve* decision deals with a factual situation where a clear financial conflict of interest allegation was at issue. The Court appears to see the conflict of interest requirement set out in the Act as broad and as dealing with “conduct”, a word with a large and imprecise meaning.

Elmer Driedger’s modern principle of statutory interpretation, cited with approval in *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27, among other cases, states:

“Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.”

Ruth Sullivan and Elmer Driedger further describe what makes an interpretation appropriate:<sup>1</sup>

“At the end of the day, after taking into account all relevant and admissible considerations, the court must adopt an interpretation that is appropriate. An appropriate interpretation is one that

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<sup>1</sup> Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4<sup>th</sup> ed. (Markham: Butterworths, 2002) at page 3.



can be justified in terms of (a) its plausibility, that is, its compliance with the legislative test; (b) its efficacy, that is, its promotion of legislative intent; and (c) its acceptability, that is, the outcome complies with legal norms; it is reasonable and just.”

The *Interpretation Act*, R.S.N.W.T. 1988, c.I-8, states at s.10, that every enactment shall be construed as being remedial and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects. Despite the potentially punitive implications for the person subject to a complaint, the modern approach is to apply a liberal interpretation that promotes the purpose of the legislation, as is explicitly required in s.10 of the *Interpretation Act*.

Further, s.12 of the *Interpretation Act* states that headings form no parts of the enactment but are construed as being inserted for convenience of reference only.

Section 75 appears in Part 3 of the Act. Part 3 bears the heading “Conflict of Interest”. Conflict of interest is defined at s.74(1) as exercising an official power or performing an official duty or function when the member knows or ought to know that the performance of the duty or function or exercise of the power has the potential to further his or her private interest or the private interests of a child or spouse. The “conflict of interest” heading for the part ought not to be interpreted as limiting the clear wording of sections in the Part.

Section 75(a) differs from s.75(c) both in that it does not refer specifically to the provisions of the Part and that it addresses public perception of integrity, objectivity and impartiality, rather than actual conflicts of interests. Section 75(a) does not use the words “conflict of interest”, as defined in s. 74(a), but refers to “public confidence and trust in the integrity, objectivity and impartiality of the member”. The same limit implied by the use of “conflict of interest” ought not be read into s.75(a), as the same words could have been used but were not.

Utilizing the principles of interpretation of statutes and having particular regard to the words used and not used in Section 75 of the Act, I have concluded the mischief which Section 75(a) seeks to avoid is not limited to improper financial manipulations, but includes conduct of an

ethical nature if that conduct impairs public confidence and trust in the integrity, objectivity or impartiality of the member. Any other interpretation would render Section 75(a) superfluous in my view.

Members may choose to engage in conduct which will, of itself, not be considered a breach of the provisions of Section 75(a). The Act is not intended as a code for moral conduct. In my view, there must be a nexus between the conduct in question and the Member's obligations to the Legislative Assembly and its proper functioning.

#### Factual Background to Complaint

Premier Roland and Ms. Russell have advised me that they had been acquainted in a working relationship for some time. Each advises me that the relationship developed into one of intimacy between the two of them some time in September of 2008.

Both Premier Roland and Ms. Russell advised me that the intimate relationship between the two of them remained secret from September, 2008 until November 16, 2008, when Premier Roland informed his wife of the situation; Ms. Russell apparently advised her husband and daughter of the relationship on November 17, 2008. Key individuals at the Legislative Assembly were advised of the situation by the Premier on November 17 and 18, 2008. Ms. Russell was summoned to the Office of the Clerk for a meeting on November 18, 2008, at which meeting she acknowledged to Mr. Mercer the existence of the intimate relationship.

Mr. Brian Kardash, husband of Ms. Russell, sent an email to a number of the members of the Legislative Assembly dated December 2, 2008, expressing his concern over the relationship that had developed between his wife and Premier Roland. In that communication, Mr. Kardash indicated that the extra-martial affair had been in existence since July of 2008 and that his wife had acknowledged this to him.

Regardless of the commencement date of the intimate relationship between Premier Roland and Ms. Russell, it is clear that it extended in secrecy for a period of some months. In this Report I will refer to this period as “the period of secret relationship”.

#### The Role of Ms. Russell at the Legislative Assembly

Ms. Russell began her employment with the Legislative Assembly on August 28, 2006. She initially held the position of Public Affairs and Communications Advisor. On October 1, 2007, she commenced performing the role of Principal Clerk, Committees, a position she held until late November, 2008. Upon learning of the intimate relationship between Ms. Russell and Premier Roland, steps were taken by the Office of the Clerk to arrange for a transfer of the employment of Ms. Russell to an arm of government outside the physical confines of the Legislative Assembly.

As Principal Clerk, Committees, Ms. Russell was recognized as an “officer of the Legislative Assembly”. She was entitled to sit at the “Table” when the Legislative Assembly is in Session and provide procedural advice directly to the Speaker, Clerk and Members of the Legislative Assembly. In her position, Ms. Russell acted as coordinator for activities of all Committees and the Legislative Assembly and attended public and *in camera* meetings of the Committees. During the period of secret relationship, Ms. Russell served as Committee Clerk and observer for the Rules and Procedures Committee, the Government Operations Committee, and the Economic Development Committee. During this same period she was a frequent observer of the meetings of the Priorities and Planning Committee.

The role and purpose of Standing and Special Committees is described succinctly at page 35 of the Members’ Handbook as follows:

“Standing and Special Committees are an essential component of any modern parliamentary democracy. They allow the Assembly as a whole to refer complex matters to a smaller group of Members for detailed study and analysis. In our unique consensus system of government, Committees may act as a sounding board for the Executive Council prior to proceeding with

legislative, budgetary or policy initiatives. Committees also allow for public input into important matters of public policy, including the consideration of proposed legislation and budgets, and they allow Members to develop expertise in certain specific areas.

Committees are creatures and extensions of the House itself. Committees may only exercise those duties delegated to them by the House and must report their findings to the House only. The Legislative Assembly has three types of Committees:

- Committee of the Whole;
- Standing Committees; and
- Special Committees.”

### The Conduct of Premier Roland

With one exception, each of the regular Members of the Legislative Assembly expressed to me the view that the work of the Committees of which they were members had been adversely affected during the period of secret relationship. Each of these Members felt that the confidentiality of Committee proceedings had been breached in some fashion and the majority of the Members observed signs and signals that Premier Roland had acquired knowledge of Committee discussions and proceedings shortly following the conclusion of Committee meetings.

The problem was magnified by the apparent fact that the Premier and certain regular Members were in confrontational mode dating back to the election of October, 2007. The co-operative spirit that had prevailed in previous legislatures was strained in the summer and fall of 2008, extending into 2009. Suspicions abounded and disagreements developed between Premier Roland and some regular Members, particularly Mrs. Groenewegen and Mr. Ramsay.

Premier Roland and Ms. Russell deny that Ms. Russell conveyed any confidential information respecting Committee activities to Premier Roland during the period of secret relationship. I have seen no evidence to the contrary.

Some Committee work dealt regularly with the relationship of the regular Members with the Premier and Members of the Executive. This was particularly true in the matters dealt with the

by the Priorities and Planning Committee. In some respects this Committee performed the role of opposition to the Executive, and matters of strategy, program proposals and policy were regularly discussed by the Committee. Proposals for action and positions on issues were debated and agreed upon at meetings of this Committee.

All regular Members but one expressed to me the view that the work of Committees, particularly the Priorities and Planning Committee, had been compromised by the presence at Committee meetings of Ms. Russell during the period of secret relationship. These eight regular Members, the six who signed the letter of complaint and two others, felt that it was wrong for Ms. Russell to present herself as an independent servant of the Committees during the period of the secret relationship when she obviously had strong emotional ties to the individual who often was the subject of discussion and planning on procedural and substantive issues. Some regular Members described it as "a question of trust".

I comment on the conduct of Ms. Russell solely for the purpose of identifying what was within the knowledge of Premier Roland, who is the only person in this complaint over whom I have jurisdiction under the Act.

Premier Roland has served as a Member of the Legislative Assembly since 1995. During a period of over 13 years, he has been a regular Member of the Assembly and served as a Member of the Executive Council. He is fully familiar with the purpose and function of the Committee system in the consensus form of government. I have concluded that Premier Roland realized that Ms. Russell could not continue her employment as Principal Clerk, Committees, while engaging in a personal relationship with him, and that is one of the reasons Premier Roland took steps in late November, 2008, to reveal the existence of the relationship to all, including functionaries in the Legislative Assembly. Premier Roland recognized that he "had to deal with the work situation".

It appears that all persons concerned were of the view that Ms. Russell could not continue her role as Principal Clerk, Committees, upon the revealing of the relationship between herself and

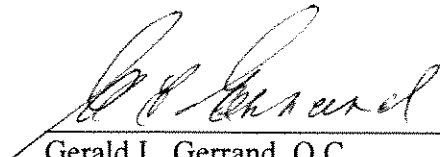
Premier Roland. Whether there had been a breach of confidentiality of the affairs of the various Committees or not through actions of Ms. Russell and Premier Roland, there clearly existed an unsatisfactory situation in late November, 2008, respecting Ms. Russell's role. Committees and their members are entitled to be served by a Principal Clerk, Committees, who has no emotional ties through a secret liaison with a Member of Executive Council, who is, from time to time in an adversarial position to Committees and their members. The perception of a conflict of personal interests on the part of Ms. Russell was in the minds of many upon learning of the secret relationship, and this perception was brought to an end by her transfer to another position in government.

However, Premier Roland allowed the employment situation involving Ms. Russell and the Legislative Committees to continue for a lengthy period of time through the fall months of 2008, while pursuing his intimate relationship with her. Had he revealed the relationship at the time it commenced, Ms. Russell would have presumably been transferred to another position at that time.

I have concluded that there are reasonable grounds to believe that Premier Roland failed to perform his duties of office and arrange his private affairs in the summer and fall months of 2008, as to maintain public confidence and trust in the integrity, objectivity and impartiality of Premier Roland as required by Section 75(a) of the Act.

I, therefore, direct that an inquiry be held before a Sole Adjudicator respecting this matter pursuant to Section 102 (1)(b) of the Act.

Dated this 26<sup>th</sup> day of May, 2009.

  
Gerald L. Gerrand, Q.C.  
Conflict of Interest Commissioner  
Government of the Northwest Territories.