



November 24, 1998

The Honourable Sam Gargan
Speaker of the Legislative Assembly of the
Northwest Territories
Yellowknife, Northwest Territories

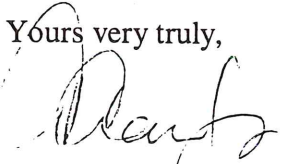
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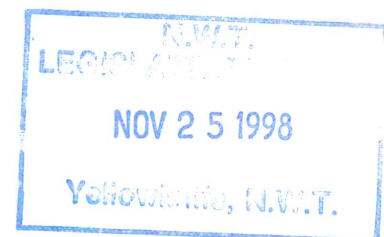
**Report in the Matter of a Complaint with respect to
Part III of the Legislative Assembly and Executive Council Act
by the Member for Hay River in relation to the Member for Tu Nedhe**

As required by s.83 of the legislation, I am providing today to you my report in this matter for tabling in the Legislative Assembly.

I thank you for your assistance throughout this long and difficult process.

Yours very truly,


Anne Crawford
Conflict of Interest Commissioner



In the Matter of a Complaint under the *Legislative Assembly and Executive Council Act, Part III* by the Member from Hay River in relation to:

The Member from Tu Nedhe

REPORT

Conflict of Interest Commissioner Anne Crawford

November 25, 1998

In the Matter of a Complaint under the *Legislative Assembly and Executive Council Act, Part III* by the Member from Hay River in relation to:

The Member from Tu Nedhe

REPORT

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**In the Matter of a Complaint to the Conflict of Interest
Commissioner with respect to alleged contraventions of Part
III of the *Legislative Assembly and Executive Council Act* by
the
Member from Tu Nedhe**

Introduction

The process

The Conflict of Interest Commissioner received a complaint, dated February 16, 1998 in relation to the conduct of the Member for Tu Nedhe, Donald Morin. The complaint was brought by Member of the Legislative Assembly Jane Groenewegen under Part III of the *Legislative Assembly and Executive Council Act*, R.S.N.W.T. 1988, c.L-5, as amended (the "*Act*").

In May of this year, both the complainant and the Member from Tu Nedhe had an opportunity under s.81(2) of the *Act* to make submissions. Having heard from both parties, I determined that several of the allegations in the complaint appeared to warrant an inquiry. The resulting Terms of Reference are attached to this report as Appendix "A".

Following the requirements in s. 82 of the *Act*, the hearings have been conducted in public and in accordance with principles of natural justice. We have heard twenty days of evidence and argument considering eight Terms of Reference involving the Member from Tu Nedhe, the Honourable Don Morin.

During that time, the proceeding has gone forward with open doors, and has indeed been broadcast on cable television, as well as receiving significant media coverage. The openness of the proceeding has benefited from simultaneous interpretation into Chipewyan, the language of a significant number of constituents of the Member from Tu Nedhe. Transcript and arguments have been published on the Internet.

Commission Counsel has been active in preparing and presenting evidence on my behalf. Legal representation has been provided to the Member for Tu Nedhe, funded by the Legislative Assembly by direction of the Management and Services Board. Unfortunately, my recommendation that legal representation also be funded for the complainant, and two witnesses who were integrally involved in the proceeding was declined by the Management and Services Board. Those individuals have been ably represented by counsel, but this proceeding has clearly been a significant financial imposition for them.

The scope of this proceeding has been unusually large, owing to the number of allegations to be considered. Forty-two individuals gave evidence during the hearings, generating 3850 pages of transcript, and over 12,000 pages of documents were produced.* During that time we have learned a great deal about government policies and practices, and about the private and business affairs of several individuals. However, the focus of the process and of this decision is the allegations of conflict of interest against Premier Morin, and there will be no comments on those broader issues except as necessary to make a determination about any such conflict.

On terms of strict confidentiality, parties and witnesses represented by counsel in this proceeding received had the opportunity to review the greater part of this decision before delivery of it to the speaker. Counsel also had the opportunity to discuss the terms of my ultimate recommendations to the Legislature in a meeting that was not open to the public.

Under s.83 of the *Act*, it is my duty as Commissioner to deliver this report and any recommendations to the Speaker of the Legislature. I have been informed that there will be a special session of the legislature called in order to table the report as soon as possible for consideration of all the Members of the Legislative Assembly.

It will be the responsibility of the Members to consider my decision, and to accept or reject my recommendations. If they do not accept my recommendations, then it is their duty to determine what course of action they deem appropriate. Under s.1(2) of the *Act*, “Nothing in this *Act* affects the inherent power of the Legislative Assembly to control its own proceedings, privileges or prerogatives, unless expressly provided otherwise.” There is no express provision limiting the course of action open to the Assembly.

The complaint

The terms of reference for the Inquiry identify seven matters from the original complaint, which disclosed adequate grounds for proceeding with an inquiry, with an eighth term covering other matters which might arise during the inquiry. Over the course of the hearings, I determined that issues 6 and 7 of the original terms of reference raised similar issues, so I have combined them into a single issue. Alleged violations of the *Act* will be considered in seven sections. In a final section I deal with my recommendations.

The issues before this Inquiry are defined in the terms of reference. The original terms of reference, in their original order, are set out in Appendix “A”. I present them here in the order in which each will be addressed in this report:

1. The role of the Member, if any, in the transfer of the bison herd formerly located at the Hanging Ice Ranch to the Deninu K’ue Ranch located near Fort Resolution, and whether his conduct in respect to the transfer contravened the *Act*.

* Throughout this decision, references to transcript appear are indicated in brackets, “(p.x)”. Documents are referenced by their document number(s), “(doc.y)”.

2. The role of the Member, if any, in the awarding of contracts involving the Government of the Northwest Territories and Nova Construction (1987) Ltd. or any other company in which Milan Mrdjenovich has an interest, and whether the Member's conduct in that regard contravened the *Act*.
3. The circumstances surrounding the sale by the Member of certain property located in Fort Resolution legally described as: Lot Twenty-three (23), Plan 58, Fort Resolution, whether the Member received a benefit as a result of the said sale which contravened the *Act*, the Members' conduct in respect of that sale and the lease of office space by the Government of the Northwest Territories in the complex developed on the land by the Deninu K'ue Development Corporation.
4. The circumstances under which the Member came to reside in the house located on property presently owned by Nova Construction (1987) Ltd. and legally described as: Lot Twenty-eight (28), Block One Hundred Fifty One (151), Plan 2403, Yellowknife; and whether the Member received any benefit as a result of the residence being made available to him and whether the Member has by his conduct in relation to this issue contravened the *Act*.
5. The role of the Member, if any, in the 1997 decision of the Government of the Northwest Territories to extend the lease of office space in the Lahm Ridge Tower building located in Yellowknife and whether any conduct of the Member in respect to that decision contravened the *Act*.
6. The conduct of the Member in respect to the Canada's Northwest Territories Government Aurora Fund (1996) and the Canada's Northwest Territories Government Aurora Fund II, and whether any such conduct contravened the *Act*, the role of the Member, if any, in the decision of the Government of the Northwest Territories to award a contract to Roland Bailey, or a company in which Mr. Bailey has an interest, for preparation of a report on privatization of the Petroleum Products Division, and whether the Members' conduct in respect to such award contravened the *Act*.
7. Such further and other matters as may be relevant and arise from the investigation of the foregoing.

Three such matters did arise, and will be discussed below.

The witnesses

As noted, there were forty-two witnesses whose evidence was received before the Inquiry. A complete list of witnesses is set out as Appendix "B" to this Report. The primary role of certain key witnesses in relation to the allegations in this Inquiry is set out briefly below:

Don Avison was Principal Secretary to Premier Morin until February, 1997. As such, he was the top political advisor to the Premier.

Ferne Babiuk was Executive Assistant to Premier Morin until May, 1997, when she took over from Don Avison as Principal Secretary. She shares an apartment with Roland Bailey, who is a close friend.

Roland Bailey was Secretary to Cabinet and Deputy Minister of the Executive until October, 1996, when he left the public sector. Since then, he has been involved in several contracts involving the Government of the Northwest Territories (the "GNWT"). He was appointed Northwest Territories Investment Manager to the Aurora Funds, a government-administered Immigrant Venture Capital Fund. He was the successful proponent for a \$250,000 contract to prepare a report on the privatization of the Petroleum Products Division of the GNWT. With Milan Mrdjenovich, Mr. Bailey also purchased Lahm Ridge Tower in Yellowknife at the time of an extension on the GNWT lease of that building.

Chief Don Balsillie has been the Chief of the Deninu K'ue First Nation ("DKFN") since 1994. The DKFN is centred in Fort Resolution, where its members make up the majority of the population. Fort Resolution is the largest population centre in Premier Morin's riding. He is also President of the Deninu K'ue Development Corporation (Transcript p.1556) referred to as "DK Dev Corp". The DKFN was granted the bison herd by the Government of the Northwest Territories. The DK Dev Corp was responsible for buying Premier Morin's lot and developing an office complex on it.

Danny Beaulieu was the sub-chief of the Deninu K'ue First Nation and an officer of the DK Dev Corp. He drafted the proposal on the basis of which the GNWT granted the bison herd to the DKFN and was heavily involved in negotiations with the Department of Renewable Resources and Milan Mrdjenovich on that issue.

Vince Dixon is (and was at most times relevant to this Inquiry) the Regional Superintendent of the Department of Public Works for the North Slave, which includes Yellowknife. He was involved in negotiating the extension of the GNWT leases for Lahm Ridge Tower.

Jane Groenewegen is the Member of the Legislative Assembly for Hay River. She brought the complaint regarding Conflict of Interest against Premier Morin.

Ken Lovely is a retired civil servant, and at most times relevant to this Inquiry, was Deputy Minister of Public Works. In that capacity, he was involved with approving

GNWT leases in the Fort Resolution office complex and Lahm Ridge Tower. He also accepted the recommendation from the Petroleum Products Division to contract with Roland Bailey.

Milan "Mike" Mrdjenovich is a contractor and property owner who has worked in the Northwest Territories for almost twenty years and has done over \$150 million of business, mostly with the GNWT. Until 1997, Mike Mrdjenovich was the 100% shareholder of two companies, Nova Construction (1987) Ltd., and Nova Construction (1994) Ltd. The two companies operated out of the same office and shared many business functions, i.e. accounting. Nova (1987) is a holding company for Mr. Mrdjenovich's real estate assets and Nova (1994) is the company thru which Mr. Mrdjenovich tenders bids and does construction. In 1997, Mr. Mrdjenovich sold 75% of Nova (1994), and Nova (1987) moved offices. He personally built the bison ranch in Fort Resolution in return for bison and Nova Construction (1987) Ltd., built the office complex in Fort Resolution. Nova (1987) built and owns the house in which the Premier resides in Yellowknife. He is also a 50% owner of the numbered company, which bought Lahm Ridge Tower and was involved in extending the GNWT lease on that building.

Other witnesses had an important role to play and will be identified as their evidence becomes relevant.

The legislation

In the Northwest Territories, the obligations of the Members of the Legislative Assembly and of Ministers with respect to conflict of interest and the conduct of personal affairs are set out in Part III of the *Legislative Council and Executive Council Act*. There have been several amendments to the *Act* in recent years, most recently in 1996. The purpose of the *Act* is to try to promote and maintain public trust and confidence in the integrity, impartiality and objectivity of the Assembly Members and of the process of government.

Part III defines conflict of interest and sets out the obligations of members. With certain exceptions, it states that Members cannot enter into contracts with the GNWT. It sets out rules for the acceptance of gifts and benefits, and a specific set of rules requiring complete disclosure by members of their financial position to the Conflict of Interest Commissioner. It creates the position of Conflict of Interest Commissioner, who is appointed by the Commissioner of the Northwest Territories on the advice of the Legislature, and holds office during good behaviour. It also sets out his or her powers, including the giving of advice, reporting, and enforcement.

The *Act* is enforced where there is a complaint from any person -- not just a Member of the Legislature -- that there has been a breach of the *Act*. On receipt of a complaint, if it is determined there is a reasonable basis for it; there will be an Inquiry. Inquiries are generally public. The Commissioner is charged with reporting to the Legislature about any findings with respect to any breach, and with recommending a course of action for the legislature.

The sections of the *Act*, which are relied on in this decision are set out as Appendix “C” to this document.

The standard of proof

The standard of proof is the degree of certainty required, on the part of a decision-maker in order to make a finding. Proof is based on the totality of the evidence. In a criminal case, the prosecution is required to prove an allegation “beyond a reasonable doubt”. In civil cases, the standard is not as high, and each party has to be able to support their allegation on the balance of probabilities when one conclusion is equally consistent with another, then that conclusion has not been supported on the balance of probabilities.

The only submissions before the inquiry with respect to the standard of proof in a conflict of interest matter were those of Commission Counsel. They brought to my attention the unreported case of the Prince Edward Island Supreme Court, *Prince Edward Island (Clerk of the Legislative Assembly) v. Young*, [1987] P.E.I.J. No. 74. Justice McQuaid held that “it would not be sufficient in my mind, that proof of the facts alleged be established merely on a balance of probabilities, but rather that it be established beyond a reasonable doubt.” With respect, that judgment is not binding on this proceeding. The conflict of interest procedure in Prince Edward Island at the time was notably different from the procedure here in the Northwest Territories, I decline to follow it.

However, it is true that the consequences under the conflict of interest legislation are very serious ones, which have the potential to affect public figures’ careers and reputation. It is well-recognized by our courts that the degree of proof required to meet the balance of probabilities requirement will vary in all the circumstances, and particularly, will depend on the significance of the consequences in a particular case. Chief Justice Dickson, in *R. v. Oakes*, [1986] 1 S.C.R. 103 at 137-8, adopted the view that:

A civil court, when considering a charge of fraud, will naturally apply a higher degree of probability than that which it would require if it was considering whether negligence was established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature, but still it does require a degree of probability, which is commensurate with the occasion.

This statement, I think, has an application to this proceeding even though we are not a civil court.

Commissioner Ted Hughes, in a conflict of interest proceeding in British Columbia, was called to rule on whether an MLA had violated conflict of interest guidelines when he participated in a debate and vote, in relation to the structure of the Legal Services Board, from which that member earned some income through representing clients on legal aid: *Application by the Honourable Member for Powell River; Alleged Contravention by the Honourable Member from Matsqui*, October 26, 1994 (*DeJong*). While the specific public duty involved in that case was participation in legislative debate, I consider

Commissioner Hughes comments to have a wider application to the variety of duties and activities involved in representing a constituent.

I will quote at length from Commissioner Hughes' comments regarding the standard of proof where there was such an allegation (at p.10-11):

It is therefore with thoughtful consideration and great caution that I undertake an adjudication that could result in the denial to those 28,000 voters of the voice in the legislature they selected to represent them.

...

The same thoughtful consideration and caution of which I speak... causes me to conclude that I must be quite satisfied that a member has offended section 2.1 of the *Act* by debating and voting in the House before I rule that a violation has, in fact, occurred. Because the very foundation of our democratic system rests on freedom of speech and action by those elected to represent us, no lesser standard than that is acceptable for determining when a muzzle is to be placed on a member's participation. In a sense, what is required is a delicate balancing of a member's right to fully participate against his/her obligations to comply with the provisions of the Members' Conflict of Interest *Act*.

Conclusion

The standard of proof in a conflict of interest proceeding requires that I be quite satisfied that a Member is in breach of his or her obligations under the *Act* before I make any determination about whether a breach has occurred. The *Act* imposes serious obligations on a member, but it must be interpreted in a way that is consistent with the important role of Members of the Assembly as representatives of the public. I should be loathe to make a decision which limits the representation of Premier Morin's constituents unless there is clear and convincing evidence of a breach of the conflict of interest legislation.

Bison Herd

Issues

Did Mr. Morin have any private interest in relation to the decision to transfer the bison herd from Ft. Smith to Ft. Resolution?

Relevant Sections 69(1)

Did Mr. Morin acted improperly in facilitating the business relationship between the Deninu Kue First Nation and Mrdjenovich or between the two and the Government of the NWT in their activities in relation to the bison herd?

Relevant Section 67(a)

Facts

The Hunters and Trappers Association in Fort Smith set up the Hanging Ice Ranch in 1989 as a project directed towards restocking the Wood Buffalo National Park. For financial reasons, the Government of the Northwest Territories (the "GNWT") took over the ranch in 1992. The annual costs of maintaining the herd were in the region of \$200-250,000.

In April of 1995, the Federal government announced that they would not be calling on the Hanging Ice Ranch herd for re-stocking the Park at any time in the near future. At that time, the Department of Renewable Resources re-evaluated its support for the project. The Government was not prepared to continue an indefinite subsidy.

On May 23, 1995 the Minister of Renewable Resources met with community members at Fort Smith to communicate with them directly that the Government would no longer be subsidizing the herd, and to evaluate community support for commercial sales of live animals or meat which would provide financial support for a continuation of the herd. After that meeting, the Department concluded that such support would not be forthcoming.

At that meeting, the Department of Renewable Resources set a deadline of December 1, 1995 to stop funding the herd. They began to seek a way to dispose of it.

It is clear from correspondence between the Department and the community over the next several months that it was the first choice of the Department to retain the herd in Fort Smith and that proposals from Fort Smith were encouraged and offered preferential treatment.

Deputy Minister Joe Handley communicated with First Nations, community organizations and Métis Locals in the South Slave. The question of the fate of the Buffalo herd was also given significant radio coverage throughout the region. The Department was, in effect, prepared to give the herd to a community or aboriginal group which could show that it could meet the three criteria:

- 1) the ability to maintain the herd without further support from the Government of the Northwest Territories;
- 2) a commitment to keep the herd in the Northwest Territories; and,
- 3) a willingness to provide access for research purposes.

The Department of Renewable Resources also indicated clearly in their correspondence with the Fort Smith Groups that the deadline of December 1, 1995 was quite fixed and that clear indication of progress towards a proposal for how Fort Smith would maintain the ranch without support from the Government of the Northwest Territories would be required by the end of September, 1995. No such progress was in evidence. The Salt River First Nation and the local Métis Nation were specifically asked, on August 30, 1995 and September 1, 1995, by Deputy Minister Joe Handley whether there had been any progress; there was no evidence of such progress at that time.

On September 5, 1995, there was a meeting in Fort Resolution, which included Danny Beaulieu, Mr. Don Morin, and the Deputy Minister of Justice and the Deputy Minister of Renewable Resources. The meeting attempted to bring together a community justice project that involved some form of bison ranch. The proposal did not develop any momentum.

In September, 1995 a proposal was developed by the Deninu K'ue First Nation (the "DKFN") in Ft. Resolution, and approved in principle by the Band Council suggesting that they would form a corporation with a sixty-forty split in ownership between themselves and Milan Mrdjenovich, a Yellowknife businessman with some history and knowledge in dealing with buffalo, and a subject named in the complaint being heard. The proposal suggested that Mr. Mrdjenovich would provide the initial \$285,000 in capital to develop the facilities needed to house the herd.

The proposal received by Renewable Resources was a beginning sketch. There was no financial plan, budget or cash flow. There was no description of the proposed facilities.

At the recommendation of then Minister of Renewable Resources Silas Arnaq'naaq, on October 19, 1995 the Financial Management Board approved in principle the decision to transfer the herd to Fort Resolution. The motion to approve in principle was seconded by Mr. Morin.

Although the Fort Resolution deal was approved in principle, it was still subject to a preference for a proposal from Fort Smith which would see that community retain the herd on the same terms.

At a meeting on October 28, 1995 attended by Chief Balsillie, Sub-chief Danny Beaulieu, Deputy Minister Joe Handley and Milan Mrdjenovich, the terms of the potential transfer of the bison from the GNWT to the DKFN were negotiated. The terms included a provision that 60% of the breeding stock remain in the Northwest Territories for at least 5 years.

The DKFN and Mrdjenovich never followed through with the creation of the proposed company, as was called for in their original proposal.

Instead, they struck different deal. Mrdjenovich agreed to build the new ranch at Little Buffalo River near Ft. Resolution, and he would transport the bison to that location. Mrdjenovich would be paid in kind. In kind meant in wood bison. That was exactly what happened.

Although this later agreement was very different and would and did have very different consequences from the written proposal received in September, it was still consistent with the approvals that had been received from the Financial Management Board and with the requirements of the DKFN contractual agreement with the Department.

The Ft. Resolution parties never offered nor were they asked for confirmation or an update on their venture or the legal relationship between the two participants.

As of December 1, 1998, the Ft. Resolution people were advised that there had been no proposal from Ft. Smith and that they could anticipate receiving the bison when the ice road allowed.

The construction on the Little Buffalo River enclosure began at the same time. It was the coldest and darkest period of an arctic winter. The project was pushed through in difficult circumstances, involved the purchase of special equipment and the commitment of unsecured up front capital, all of which was put forward by Mrdjenovich.

The Financial Management Board voted to finalize the grant-in-kind contribution of the Bison to the Deninu K'ue First Nation on February 6, 1996.

As the bison were being loaded on February 15-16, 1996 it was made clear to the wildlife officers and biologists on site that, of all the bison bound for Ft. Resolution, a substantial number were going to be sorted there and then re-loaded and taken to Gainford, Alberta where Mrdjenovich had his ranch.

Loading and transport are high-risk operations for buffalo, and even more so in the dark and cold of an arctic winter. The recommendation of the departmental staff on site was to reduce the risk and allow immediate shipping to Alberta. This direct transfer was authorized in an amendment to the transfer agreement signed by the Minister on February 14, 1995.

Following receipt of relevant invoices the actual costs of transportation and construction was tallied. Mr. Beaulieu and Mr. Mrdjenovich sat down and worked out the total cost. They also estimated the value of the animals, using sample prices from Moore's Auction

House. There was an exchange of some farming/heavy equipment included in the accounting. The accounting led to a further shipment of animals to Gainford in the spring of 1995. From that point forward the DKFN were the 100% owners of the remaining animals and all the related equipment at Little Buffalo River.

The DKFN and Mr. Mrdjenovich made a later agreement regarding management and the ownership of calves born for the next 5 years, but this was a separate, if consequential, transaction.

Reasoning

The role of the Member

From the undisputed testimony of all witnesses, Mr. Morin was the contact point where the interests of the DKFN and those of Mr. Mrdjenovich in the buffalo herd were first made known. Both the DKFN and Mrdjenovich contacted Morin about their interest in the bison. He provided the necessary information to interested parties to allow them to put together a deal which was for the benefit of his constituents.

Decision to transfer the buffalo herd

The decision to stop subsidizing the wood bison, and to seek proposals to maintain the herd without subsidy, was made by the Department of Renewable Resources independently of any interests in Fort Resolution and clearly of any interest of Mrdjenovich, who had not yet even expressed an interest in the bison.

When the matter came before the Financial Management Board of which Morin is a member, it is clear that he supported the proposal to transfer the herd to the Deninu K'ue First Nation. He is on record as having seconded the motion. I also find that he was fully aware of the proposal for a jointly owned corporation between the First Nation and Mrdjenovich.

However, his support for the motion is completely acceptable from the point of view of conflict of interest, because he was receiving no personal benefit from the transfer as discussed above.

Moreover, in light of the terms of the proposal that received the conditional acceptance of the Board, it is clear that the Board maintained -- even in mid-October 1995, six weeks before the subsidy was to end -- an opportunity for the Fort Smith groups to match the proposal of the Fort Resolution group whose political interests Mr. Morin was entitled to advance. There is in fact every appearance that the Financial Management Board was open to receiving a proposal from Fort Smith.

There is no indication that there was unacceptable political interference in the decision-making of the Financial Management Board.

Messy legal arrangements

It is clear from the evidence that the Deninu K'ue First Nation's proposal was indeed very incomplete, and further, that the eventual transaction between DKFN and Mrdjenovich did not conform to the terms of the original proposal. Further, it is clear that they did not keep the Department fully abreast of changes in their internal arrangements.

Incompleteness

The proposal had no financial component, the planned corporation was never incorporated, and there was no contract with Mrdjenovich, no drawings, standards, or training and support plans.

The desire to privatize (or end the subsidy to) the herd, and the apparent lack of progress towards a viable proposal in Ft Smith may have blinded Renewable Resources to the skiminess of the proposal made by the DKFN. The Department of Renewable Resources needed and wanted a proposal and was happy to work with the one, which arrived from Ft. Resolution. Their failure to request or require additional details or confirmation of the terms of the initial proposal has led to continuing controversy over whether Ft. Resolution and Mr. Mrdjenovich either cheated or "pulled a fast one" in concluding this deal.

Deviation from the original proposal

The original proposal called for the creation of a jointly owned corporation and an ongoing business relationship between the First Nation and Mrdjenovich. However, the DKFN and Mr. Mrdjenovich had agreed that he would keep approximately forty percent of the bison, and ship them to Alberta, and they would retain the permanent facilities for the herd.

It is clear that the original proposal did not receive significant attention in terms of the details of the plan; let alone the corporate relationships to be set up to facilitate the transfer. Danny Beaulieu, then the sub-chief at Fort Resolution testified that the written proposal was authored, on his instructions, by an RCMP officer friend of his who was then stationed in the community. Mr. Beaulieu stated that he was not strong on the corporate structures proposed and didn't consider them very relevant. Similarly, Mr. Mrdjenovich appears never to have confirmed his proposed role as a shareholder, and was at that point, heavily engaged in construction in Arctic Russia. I believe him when he states that there was never any serious consideration of ownership in that form.

However, I am satisfied that the Department of Renewable Resources had sufficient information about the progress of the proposal to be considered to have acquiesced in the changes to the corporate structure that occurred in fact. There are extensive minutes of the meeting of October 28, 1995, where Beaulieu, Balsillie, Handley and Mrdjenovich

were present. Although all relevant parties to the deal were present, there was no discussion of any corporation at that meeting.

Political benefit

There is a clear difference between a private benefit to a Member and a political benefit for a Member which accrues through his efforts on behalf of his or her constituency, and which is acceptable and outside of the scope of conflict of interest legislation.

There is clear evidence that Mr. Morin benefited politically from the transfer of the Bison herd to Fort Resolution. There is a tangible emotional connection between people of the Cree and Chipewyan nations and bison. This was asserted by, the Honourable Stephen Kakfwi, the current Minister. The statement rings true both in the desire of Ft. Resolution to obtain the herd and the passions provoked in Ft Smith at the loss of what was seen as more than simply a community asset. The transfer of the herd and the resulting emotional and financial impacts was a triumph for Mr. Morin and the DKFN. But this political benefit is perfectly acceptable and within the normal realm of the political benefit that a successful project would bring for any political leader. It may or may not be open to political analysis, commentary and approval or concern, but it is not a conflict of interest.

Morin's desire for the success of the project in his home community matched the policies of the government of the day and the desires of his constituents. Morin was legitimately entitled to prod, advise, encourage and finagle to promote the interests of his constituents, consistent with the policies of government, and to accept their evaluation of what those interests were.

The assertions of Morin and Beaulieu and Balsillie that Morin was only involved in the most minor fashion in the transfer of bison to Ft. Resolution appear to strain credibility. These and other witnesses appeared to believe that they should minimize at every turn the role and activities of Mr. Morin in this transaction and any process under examination. The problem in doing so is that, by diminishing Morin's role so obviously and persistently these witnesses diminish their own credibility on other issues.

Each of the above-named witnesses was careful to tell me that Don Morin did not prod, advise, encourage or finagle in pursuit of the wood buffalo deal. However, Mr. Morin's entitlement to score a political coup on behalf of his riding is not affected by the question of whether one of the participants in the deal, Mr. Mrdjenovich, got a good deal. Nor is it relevant to a Conflict of Interest that some, but not all, residents of the NWT are convinced that no bison should have been permitted to leave the territory.

The Territorial Government was willing to make an in-kind grant of the Hanging Ice Bison herd to an Aboriginal group in the South Slave Region in order to rid itself of the financial cost of maintaining the herd.

At the time the Financial Management Board considered the question, it had deemed the value of the herd to be \$900,000. It is clear from the evidence that the valuation of herd by the Financial Management Board was excessive. The evaluation assumed a nil cost for

transportation, and was based on the highest auction prices in a market where wood bison were scarce and valuable. It was not a practical market cost. I accept that their high valuation was for a good and adequate reason. The intention of the government was to put a high value on the herd in order to not under-value the property when the purpose was to seek approval to give it away.

Despite the high value placed on the herd by the Financial Management Board, an acceptable proposal to maintain the Buffalo would necessarily require an infusion of capital (except, perhaps in Fort Smith). The intention was to transfer the herd to an aboriginal organization South of the Lake, where claims remain unsettled and there are no cash pools on which a community could draw. You can't get a mortgage on a buffalo herd. This herd would have had so many risks attached due to location, the passion of politics at that time and the dangers of transfer, it would probably have been considered by almost any private lender as a greater liability than an asset.

Furthermore, the government forced an almost impossible timetable onto the process by setting the deadline for proposals from Fort Smith as December 1, 1995. This meant that the transfer to Ft. Resolution could not be confirmed until December, and as a consequence construction could not reasonably begin until that time.

In those circumstances, it was clearly foreseeable that any proposal originating outside of Fort Smith would involve some kind of a joint venture investment by someone willing to take risks. It was also foreseeable that any such investor would plan on making a profit through commercial dealing with the herd, either as meat or by selling some live animals, most likely outside the Northwest Territories.

Mr. Mrdjenovich was such an investor. He thought the bison would be valuable. At the time he made the deal the wood bison genetics were very desirable and had every prospect of being a valuable asset. Later, problems arose which diminished their value, but they are of no relevance today in judging the decisions made at the time of transfer. The subsequent problems with disease status are simply one of the risks in what was a very risky transaction.

The risks were considerable. The buffalo could have been lost in large numbers in loading and shipping. They could have broken loose at some point and acquired the very diseases they were to be free of. They could have been subject to huge appreciation in value on their arrival on the market, or could have lost marketability due to disease and low calving rates.

Mr. Mrdjenovich accepted all these risks and accepted the task of making the plan work by meeting the criteria set by government. He found a willing partner in Chief Balsillie, Danny Beaulieu and the DKFN. Mr. Mrdjenovich assumed the largest proportion of that risk. He alone took a financial risk. The DKFN was prepared, in return, to allow Mr. Mrdjenovich to profit.

As well as taking the financial risk in the transaction, Mr. Mrdjenovich did real work. Building a buffalo compound in the dark and cold of a sub-arctic mid-winter is no small feat. It was built on time and was adequate to the purpose.

Chief Balsillie stated in his testimony that prior to the transaction in November of 1995 the people of Ft. Resolution had no buffalo, no related equipment, no holding pens or fencing and no buffalo related jobs. After investing no money and risking no band funds by March 1996, they had all of these, free and clear, including a breeding herd.

If I assume - which I do not - that Mr. Mrdjenovich made a healthy profit or took a whopping loss, that is of no consequence to the issue of conflict of interest on the part of the Premier as long as the Premier has no private interest. It is acceptable for Members of the Legislative Assembly to get involved in brokering deals which clearly benefit their constituency, even where there is significant benefit for a private investor -- so long as there is no private benefit for the Member him or herself.

No private benefit

A conflict of interest which would adversely affect the public's view of the integrity of the political process arises where the member directly or indirectly benefits *personally* through use of his or her office. Because of the emphasis in this Act on the importance of public perception, even a strong appearance of personal benefit accruing from the use of a Member's office may be sufficient to find a violation of the Act.

In the case of the Wood Bison herd, it is clear that there was no direct or indirect personal benefit to Morin arising through his involvement in this project.

This transaction pre-dates the personal relationship between Premier Morin and Mr. Mrdjenovich established through the construction of the house and even the Ft. Resolution transactions – otherwise, it could have been viewed differently.

In some instances a conflict of interest may be found based on a retroactive benefit - where the benefit to the Member does not appear until after a political benefit is given. Here, there is no suggestions that later transactions were a consequence of, flowed from, or hinged on this transaction, and I am unprepared in this case to attribute any later benefit to this earlier transaction. This transaction does become part of the backdrop to subsequent dealings between the two, but in and of itself, there is no private benefit to Mr. Morin.

In conclusion, I find that Mr. Morin was not in any conflict of interest arising through the transfer of the bison. While the transfer was clearly politically beneficial to him, it was not a matter which affected his "private interests" as defined in the Act. This is the case, whether or not he was significantly involved in creating the conditions for the herd to be brought to Fort Resolution, and whether or not Mr. Mrdjenovich made a significant profit on the transaction. There was no evidence that the decisions of the Financial Management Board or of the Department of Renewable Resources were inappropriately affected by Mr. Morin's acceptable political involvement in this transfer.

Nova Contracts

Issues

Has the Member used his office to seek to influence decisions of other persons in the Department of Public Works or the Northwest Territories Housing Corporation which relate to Nova Construction (1987) Ltd. or Nova Construction (1994) Ltd., under circumstances where the Member had a relevant private interest?

Relevant Section: s. 68(2)

Facts

Evidence was presented to the Inquiry from the Deputy Minister of the Department of Public Works and the President of the Housing Corporation about the statute and policies under which their contracting capabilities are exercised. The Government Contract Regulations under the *Financial Administration Act* set out the ground rules for contracting. Those regulations are augmented by a number of manuals, including the *Financial Administration Manual* produced by the Financial Management Board Secretariat. These manuals are used within departments to insure that financial transactions follow standard procedures and are processed and paid in an authorized manner.

Except in unusual circumstances, the Government of the Northwest Territories is required to award contracts based on a competitive process. The two major processes for competitive bidding are tender calls and proposal calls. There are two types of contracts awarded without a competitive process: sole source contracts and negotiated contracts. On average, over the last three contracting years, Public Works entered into 450-600 contracts a year. Tender calls comprise 75% of contracts by value; proposal calls 10%, sole source 10% and negotiated contracts 5% (p.350).

In a tender process, companies or individuals bid on well-defined projects, primarily on the basis of price. Price is the most important criterion. The Business Incentive Policy (BIP) is another factor. It promotes northern business and local involvement, and provides a percentage advantage to contractors who use local labour and supply.

The majority of contracts are advertised, and bids are publicly received and recorded. The BIP is applied as part of an internal evaluation process which includes the credibility and ability of the contractor to deliver at the price bid.

When the award committee's decision is made to award a contract, a person who has been identified as a contract authority at the appropriate level of signing authority confirms the award.

Where there is a proposal call, there is a wider scope for variation in the responses received. The government will have a clear idea of what end-product or result it desires, but seek to have potential contractors propose and develop appropriate and efficient means to accomplish that goal. Non-monetary factors have a more significant role in assessing the proposal. A call for proposals is also publicly advertised, and includes a performance specification, an internal evaluation criteria are developed before the call and publicized as part of the call.

In certain defined situations, legislation provides for sole-source contracts to be negotiated between a contractor and a department. A sole source contract may be entered into where there is an emergency; a low dollar value; or if there is only one contractor available to do the work. The contract authority has the power to decide whether to contract on a sole source basis or by tender. Typically, the contract authority for a sole source contract would be a regional superintendent.

Finally, there are Cabinet-approved negotiated contracts which are viewed as a mechanism for giving work directly to a company that has the potential to serve a community interest or develop into a strong local or northern contributor to the economy. In this hearing, an obvious example is the contract between the DKFN and the Department of Public Works for the Ft. Resolution lease space. Community support, both from the community government and from the MLA, is canvassed when a negotiated contract is considered.

It was the evidence of Mr. Rattray, Deputy Minister of the Department of Public Works ("DPW"), that the Nova companies had never been the general contractors or the principal contractor in a negotiated contract with the Government of the Northwest Territories. Nova had been a subcontractor, providing services to a principal contractor such as a First Nation Development Corporation (p. 143-144).

David Murray, President of the Northwest Territories Housing Corporation ("Housing Corp"), had with his staff, gone to considerable efforts in order to be prepared to testify in a very clear and helpful manner. He identified three categories of contracts that Nova had with Housing Corp: government leases through the Rental Supplement Programs; government staff housing leases; and construction contracts to build units to be owned by the Housing Corp. Staff housing leases were transferred from Public Works to Housing Corp to be administered in 1996. Including those DPW leases, Housing Corp had a total of twenty-six leases with Nova. All the leases had been awarded through a public competitive process, and most had been tendered. Two of Nova's thirteen leases were assigned to them by the successful bidder in a private transaction. For the rest, Mr. Murray testified that in each case Nova's bids had the best overall evaluation, and in each case, on price alone, had been either the best or the second lowest bidder. (p. 316).

Bonnie McTiernan-Craig testified that Nova has been a party to five DPW Contracts that have not been taken over by Housing Corp. Of those, three contracts proceeded by a public, competitive process and Nova had the most favourable evaluation. Two contracts were obtained by Nova on a non-competitive, sole source basis, both in relation to the

Fort Resolution office complex. Those contracts were approved by the Fort Smith Regional Superintendent.

Mr. Rattray testified that it is not unusual that contractors already involved in major contracts are awarded sole source contracts for tenant improvements.

Reasoning

The Nova companies have had a powerful effect on the market for construction in the Northwest Territories. In relation to the staff housing complex, one witness observed that Mr. Mrdjenovich's bid prices "blew most of the other bidders out of the water" (p.741). That view was confirmed by numerous other witnesses in their testimony.

In an industry where competition is fierce and rumours are rampant, it is to be expected that allegations about a contractor who appeared to be having a spectacular success would fly. That those rumours extended to suspicions of political involvement in awarding the contracts is not entirely surprising.

However, there is no evidence that there was any interference in the awarding of contracts to Nova Construction. The testimony of all the witnesses confirmed that contracts were awarded to that company, primarily in tender bids, on a basis of price. Where Nova bid in response to Request for Proposal calls, their bids received the highest overall evaluation by evaluation committees. There was no suggestion that the process by which these contracts was awarded was anything but routine.

Of all the contracts reviewed in relation to this allegation were only two contracts that were not awarded on a competitive basis, the two sole source contracts relating to the Fort Resolution office complex. It was the evidence before the Inquiry that sole source contracts for tenant improvements are often awarded to general contractors responsible for larger building construction. No witness challenged the awarding of those contracts.

There is no evidence that the Premier attempted to use his political office to influence the decision making of the Department of Public Works or of the Housing Corp. A reasonably well-informed person could separate rumour from reality in respect of this allegation. There is no breach of the *Act* in relation to this allegation.

Fort Resolution Office Complex

Issues

Was Mr. Morin entitled to sell his land to the Deninu K'ue First Nation on the agreed terms, for the construction of the Ft. Resolution office complex project or was there an element of benefit in the transaction which arose because of his office, or would have appeared to an ordinary but well informed constituent to have arisen, because of his office or might otherwise erode public confidence in the integrity, objectivity or impartiality of Mr. Morin as a Member of the Legislative Assembly?

Relevant section 67(b) and 76 (b)

Did Mr. Morin have a private interest in relation to the Ft Resolution Office Complex which required him as a Minister or a Member to declare conflicts and refrain from participating in debate or voting or to refrain from influencing others and arrange for alternate Ministers to perform duties? If so, did he meet that standard?

Relevant sections 67 (c), 67 (d), 69(1) and 69(3)

Did Mr. Morin use his office or allow it to be used to advance the Ft. Resolution office complex project after it became apparent that his lands might be involved?

Relevant section 67 (c) and 68(2)

Did Mr. Morin use his office or allow it to be used to advance the interests of Nova Construction, at a point when he had a private interest in relation to that corporation or related individuals?

Relevant section 68(2)

Facts

Getting the project underway

For several years prior to 1995, the community of Ft. Resolution, which forms the largest part of the constituency served by Mr. Morin, the Member of the Assembly against whom

this complaint was made, had operated with a shortage of adequate office space for local municipal and aboriginal organizations.

The Deninu K'ue First Nation ("DKFN") office, the Metis Local, the Treaty 8 Tribal Council, the Deninoo Community Counsel and the local government offices were located in older houses at different locations around the community. Most of the existing office space was under the control of the Department of Public Works. The First Nation and Community Council had jointly resolved to share facilities, and allow the current Community Council office to be used as space for a Community Learning Centre to be funded by the Department of Education.

These organizations are important to the political and social structure of communities in the Western Arctic, and yet they are frequently not well enough funded to allow for offices adequate to their function at commercial rates. The Cabinet has consistently authorized "Charity Leases" at lower than commercial rates for organization in these circumstances. (Records Of Decision #89-10-19, #93-14-10, #94-3-16, #93-31-4 - referenced in 10445-10456, - as Cabinet documents, these document do not form part of the public record). This makes it possible for the Department to enter into a head lease at commercial rates and then sub-leases to community agencies at subsidized rates. The relevant difference is made up by an appropriation to the departmental budget on a yearly basis.

In 1995 the DKFN decided to respond to the shortage of commercial space. They began to develop plans and initiate contacts for the purpose of putting together an office complex /municipal/band offices/community resource centre.

To this end the Deninu K'ue First Nation created the Deninu K'ue Development Corporation (the "DKDevCorp"). The President of the corporation was Chief Don Balsillie and the Board was composed largely of the members of the First Nation and Community Councils in Fort Resolution.

At the beginning the space requirements and the potential tenants of the project were not obvious. As time passed it grew more apparent who could and would participate in the new building.

The initial proposal was for a mini-mall which would combine the retail space of the Northern Stores - formerly the Hudsons' Bay Co., the major grocery and retail outlet in many northern communities - with an incubator mall and a series of community offices. The construction would be on Northern Stores' lands which were appropriately sized and located. The enthusiasm for building on the Northern lands was two-fold - it would give the community a new and modern retail outlet, and the lands in question were the actual location of the taking of Treaty 8 and had a sentimental value.

Mr. Morin, as MLA for the riding, was an early and enthusiastic supporter of the project. He encouraged the DKFN and arranged for them to meet with the then Minister of

Economic Development, John Todd and his then Deputy, Roland Bailey. This meeting was held in Yellowknife in 1995.

Through this meeting, and through working with regional agencies, the DKFN and its development corporation began to develop a plan to finance and build the project. By December 1995 the Corporation had some preliminary financial projections, commitments from a number of organizations and some blueprints.

During the time Mr. Mrdjenovich was in Ft. Resolution dealing with the wood bison, from December 1995 to March 1996 (see discussion under heading "The Bison Herd") it became apparent to the First Nation that the negotiations with the Northern Stores were not progressing, and that the project might have to proceed without the large retail space component. This would require a whole new set of plans.

Mr. Mrdjenovich was not slow to see a business opportunity. He testified that he had a good working relationship with Balsillie and Beaulieu, the chief and sub-chief and was interested in picking up the construction contract on the complex. He offered to have his in-house draftsman go over the drawings and make the necessary adjustments. We can see this happening as early as January 15, 1996 (document 7985; see also document 10099).

Nova Construction became more and more involved in the project as time progressed, providing new plans when the tenants and location change and giving assistance and advice on the commercial aspects of the development. Mr. Mrdjenovich testified and the various records show that he advanced the project in many ways, including contacts with funding agencies and government officials.

By the spring of 1996, the DKDevCorp had a number of important issues, which needed to be resolved to get the building underway. They needed land to build on, they needed plans to build with, and they needed a GNWT lease for the office space at market rent which could then be subleased to the community organizations at the subsidized rates. They needed a contractor to build the building and they needed construction and long term financing. In resolving each of these issues the DKDevCorp appears to have relied heavily on the assistance and advice of Mr. Mrdjenovich and Nova Construction, who had been through this process many times before.

Chief Balsillie began to look around Ft. Resolution for an alternate location to the Northern Stores property. From both testimony and the request made to the appraiser it is clear that there were three potential locations, the Lloyd Cardinal property, the Larry Jones property, and the lands at Lot 23, Plan 58 Fort Resolution registered at Land Titles in the name of Donald Albert Morin, Logbuilder. The records show that the property was purchased in 1986 for \$10,000.00. The land titles records also show that the lands were transferred to the DKDevCorp on September 16, 1996 for the sum of \$55,000.00. The project is financed by a long-term mortgage from the Northwest Territories Business Credit Corporation for \$953,337.00, registered the same day. The main tenant in the building is the Government of the NWT, Department of Public Works and Services.

The sale transaction was properly noted in an amendment to the Member's financial statement dated November 19, 1996 and filed with the Clerk of the Legislative Assembly on November 19, 1996 (document 190).

The Evidence

This is an extensive and complicated transaction. In reconstructing all the parts, I have had to rely on both testimony and documentation.

The DKDevCorp appears to have kept very few documents that would assist.

There is a complete and accurate file from the Northwest Territories Business Credit Corporation, with notations made as events occurred. The BCC is an agency of the GNWT given the task of making and guaranteeing loans in accordance with its enabling legislation (N.W.T. Business Credit Corporation Act, R.S.N.W.T. 1988, c. 107 (Supp.)). On loans over a value of \$500,000 the final approval rests with the Minister Responsible, in this case, The Hon. Stephen Kakfwi, who testified briefly on this subject. The documentation is supported by the statutory declaration of Afzal Currimbhoy the Chief Executive Officer of that agency.

There is documentation from regional and headquarters office of the Department of Public Works, as well as the testimony of witnesses Sue Bevington, Ralph Shelton and Vlado Brcic.

There is the testimony of Larry Jones, and the correspondence he kept, which I take as being extremely accurate and thorough.

In addition to Mr. and Mrs. Morin, four individuals from Ft. Resolution testified as to the process involved in the office complex construction and financing: Chief Balsillie, Irvin Norn, Andrew Butler and Danny Beaulieu. Mr. Mrdjenovich also testified about the involvement of Nova Construction. Mr. MacDonald testified about the appraisal reports about various parcels of land. I find that the evidence received by statutory declaration from Mrs. Morin is clear and forthright. It relates to events which are not part of her everyday activities and so it appears that she has a clear memory of what she speaks.

Chief Balsillie was an expansive witness, given to some fluctuation in his testimony. He commonly made a broad generalization and then corrected himself by giving detailed answers which he may or may not have noticed contradicted his original general statement. I would take his more general statements to be only somewhat reliable as he has a tendency to agree with others in a non-committal way which can show on the transcript as an affirmative when in fact it is more of an encouragement to the speaker to proceed. I take his detailed or specific statements to be accurate, and the more he volunteers the more accurate I take the comments to be.

Both Irvin Norn and Andrew Butler were less well placed to see or be involved in items of significance and most of their testimony is reflective of this, often being advanced on a

second hand, presumed or hear-say basis. I would suggest that little turns on their testimony.

I will deal with the testimony of Mr. Morin, its importance and credibility, as is required to advance the narrative.

In dealing with the events that took place in the Executive Council I am able to rely on a number of Cabinet documents which have been provided to the Inquiry as well as the evidence of Don Avison, former Principal Secretary. There is additional testimony from Ministers Goo Arlooktoo and John Todd in relation to these meetings which I take to be basically truthful, although more vague than would be desirable. No doubt they have been to many Cabinet meetings in the same place with the same people and discussed issues of similar. It is not to be expected that any given meeting would stand out freshly in their minds in all its detail.

The Correspondence with Commissioner Fournier

An important element in this transaction is a letter dated June 6, 1996 and obtained from Commissioner Fournier, then the NWT Conflict of Interest Commissioner. It is a slight jump in the narrative, but because it is central to our understanding of the whole process, I will discuss it at this point.

Mr. Morin states that for a long time - probably from late January or early February of 1996. until the end of April, he would receive occasional calls from Chief Balsillie to advise him of progress on the Office Complex project. Chief Balsillie had already identified the Morin lands as a potential building site, and he did not miss an opportunity to throw in a feeler about a potential sale. Premier Morin was not interested. Each time Premier Morin spoke to Chief Balsillie about his lands, he would then talk to Don Avison, his Principal Secretary and the former Deputy Minister of Justice. I accept that Premier Morin told Mr. Avison about any approaches up to the time when the actual offer was made at the end of April, 1996. Things get a bit fuzzier after that.

Some time in early May, Premier Morin advised Mr. Avison that there was a serious possibility that, in response to the pressure from Chief Balsillie, that he would be selling his land to the DKDevCorp. This negotiation is discussed later in much greater detail.

As a result, Mr. Avison advised that they write to the then Conflict of Interest Commissioner, Mr. Joel W. Fournier, to seek his advice on the transaction. This suggestion is to be viewed keeping in mind that s. 79.2 of the Executive Council and Legislative Assembly Act states that where an official opinion of the Conflicts Commissioner is obtained, and the Member follows that advice, there is a complete protection from any future complaint. The protection exists assuming always that the Member was complete and honest in describing the situation to the Commissioner.

On what appears to be May 28, 1996, Mr. Avison wrote (document 3571), setting out the situation and stating that he would “appreciate it if [Mr. Fournier] would consider the matter and provide me with your thoughts”.

In reply, Mr. Fournier wrote on June 6, 1998 (document 2574, also entered as document 251, the “Fournier letter”) giving the Premier three items of advice:

- “1. The land be sold at a fair market value. Fair market value would have to be established by an independent appraiser;
2. The Deninu K’ue Band Council would have to provide a letter detailing that after due diligence they have been unable to locate any other suitable land;
3. In the event that the transaction does take place and the GNWT does in fact, become an occupant of the building to be constructed, the Premier, if the matter arose in Cabinet, would declare a conflict, the nature of it, and excuse himself from the meeting. It follows, of course, that outside of Cabinet, he should have no involvement with any aspect of the matter.

He concluded:

I would be pleased to provide a formal written advice pursuant to 79.2 of the Legislative Assembly and Exec Council Act, should the Premier wish. I would require the letter from the Band Council mentioned above, the estimate of fair market value and how it was determined.”

From this I take that the letter given is not an opinion pursuant to s.79.2, which would, if followed, afford complete protection from further proceeding or prosecution. It is nevertheless significant both as sign of good faith on the part of the Premier and as a statement of the standard which Mr. Morin was to meet.

What lands were available

- ***Larry Jones’ Land***

that the appraisal was needed by the DKDevCorp to finalize the land deal because Mr. Morin, or someone acting on his behalf was anxious to have the documentation needed to meet the criteria suggested by the Conflicts Commissioner before any document was signed.

All this does leave open two questions:

- (1) why did the First Nation request appraisals it never wanted; and
- (2) why didn't anyone notice that the reason implicit in the Commissioner requiring an appraisal was that the price should be set by the appraisal, not that the appraisal should be done after the fact in an attempt to justify a deal already made.

The appraisal was provided to the DKDevCorp, who eventually provided it to the Premier, who eventually supplied it to the Clerk of the Legislative Assembly as part of his amended disclosure statement discussed below under the heading "Other Matters – Inaccurate Documents".

How the Morin lands were chosen

It is difficult to say with any certainty how or why the Morin lands were chosen, in large part because the witnesses involved in doing the choosing were not very clear in describing the process they had followed. I do not take the lack of clarity to have been intentional on the part of anyone. Because of this lack of clarity it is difficult to draw any conclusion on a balance of probabilities as to whether the Morin lands were chosen in order to bestow some benefit on him, and if so, whether any benefit was intended to be bestowed because he was Premier.

It is clear that decisions were made by Chief Balsillie in his role as President of the DKDevCorp. There was some consultation with the Board, who are identified in the Butler letter as the "selection committee", but Chief Balsillie made the final calls. I also take it that information was obtained from Nova Construction who was to do the building.

In reviewing the conduct and testimony of Chief Balsillie and the evidence of both MacDonald and the witnesses from Ft. Resolution, with regard to the suitability of the various lots for construction, I am not prepared to say that the decision was influenced by who owned the lot. The Morin lot was clearly superior for construction. The Morin land was prepared and ready to go, while the Jones land would have required fill and additional costs for site preparation. The rhetoric on location is harder to accept. The Jones lots were directly across from the old First Nation Office and it is hard to suggest that they are truly out of the way.

I find that the Chief was interested in the Jones lots only for as long as he thought that the Morin lot was unavailable. Once the Morin lot was available the other lots were no longer of interest. The correspondence and contact with Jones appears to stop at the same time as the negotiations with Morin take a serious turn. Chief Balsillie never said this, but the correlation of dates speaks loudly in this direction.

It appears both from documentation and from the testimony of Chief Balsillie, Larry Jones and Mr. Morin that negotiations by the DKDevCorp for the Jones and the Morin lands were taking place during the months of April through July, 1996, at the same time.

Chief Balsillie contradicts himself as to whether or not Mr. Morin was told that there were any other negotiations going on for other lands in Ft Resolution. His original evidence on being questioned by Commission Council is: that Premier Morin knew of the Jones negotiations (p. 1638) were ongoing. On being more closely questioned by Mr. Morin's lawyers he states "he was unaware of it". (p.1672)

This becomes an item of importance because a major part of the Morin testimony and argument in explaining his own conduct in this matter relies on his own assertion that he did not know of any other potential lands in Ft. Resolution which were being considered for this project.

Mr. Morin states that he did not know of the Jones negotiations. Mr. Jones gave no indication that he knew of the Morin negotiations, and he gave very detailed testimony about all that transpired. Mr. Avison states that, through Morin and Balsillie, he was only aware of one potential site and it was the Morin lands. (see p. 1880-81). Mrs. Morin does not mention any other lands.

All of which considered, I would give the benefit of any remaining doubt to Mr. Morin and find that he did not know of the other negotiations. I would even accept the suggestion of Mr. Morin's counsel which was adopted by Chief Balsillie that there was a deliberate effort made to keep each potential purchaser from knowing of the others.

The Appraisal

On July 12 1996 the DKDevCorp, sent a request for three appraisals to the offices of Nova Construction Ltd. In turn, on July 15, 1998 Mr. Mrdjenovich spoke to Lauchlin MacDonald a well-known Yellowknife appraiser, and asked that he go to Fort Resolution. The fax from the DKDevCorp lists three properties to appraise. Mr. MacDonald had the impression that they were in a hurry (p. 1058) and that the property that was of the most interest was the Morin property (p.1086). Mr. Mrdjenovich testifies that he did not say that only one property was of interest, but I find it to be the only logical explanation of the subsequent conduct of Mr. MacDonald and everyone else involved.

MacDonald did go to Ft. Resolution on July 16, 1996, and did view and photograph each of the three identified lots. As he was told that the appraisal was needed quickly, he provided an appraisal letter for the Morin Property on July 18, 1996. He set the value at \$52,000.00. He never completed an appraisal of the other two properties, and no one from the DKDevCorp or Nova ever asked for those appraisals.

From this I conclude that the appraisal, whatever its purpose was, formed no role in the decision to build on the Morin lands. That decision had been made earlier. I also take it

Both Andrew Butler and Chief Balsillie testify that there was an actual selection process, on a date we do not know. The attributes of the potential lands were placed on a white board and points were assigned to each in categories such as location, price and development costs, although no witness was quite that specific as to the categories. No one kept any record of the points assigned. It is clear that there was no appraised value of the lots which could have been used in this decision. On the other hand, the most important cost information is what each owner is prepared to sell for, and it appears that the DKDevCorp had that information.

Under ordinary circumstances it would not make much difference how the DKDevCorp decided which lot to build on. If they have the budget and they make a reasonable selection, there is little reason for the rest of the world to worry how the decision was made. Given that they were planning to purchase from the Premier, however, and they were on notice from the discussions between Mr. Avison and Mr. Balsillie that there was an issue of Conflict of Interest, they were either very casual or very devious.

In order to determine whether there was some benefit which accrued to Mr. Morin as Premier, a preliminary issue is to determine whether either the selection or the price was influenced by the fact that it was the Morin lands. For reasons given above, I am convinced that the selection was not. The price issue is not so clear. There are arguments which supports the assertion, that the price was a fair one, and the land was sold at market value. The price is consistent with what Jones was prepared to take on a similar (though less developed) lot; it is within the range suggested by the appraisal obtained after the fact; and it is consistent with the acceptable budget of the financing agencies.

Against that argument is the fact that the sale was for three thousand dollars more than the actual appraisal; no one recorded the selection process or who exactly was involved in that decision, when or how it was made. A finding that no particular benefit accrued to the Premier would have been so much cleaner if the transaction had been based on the appraisal. However, Chief Balsillie had already offered \$55,000 by the time the appraisal arrived, and he testified he wanted to stay with his original offer.

From the testimony it appears that it was Chief Balsillie who set the price and Mr. Morin simply agreed. Morin did not try to negotiate the price upwards or obtain a greater benefit. It is my impression that to Balsillie, the importance of keeping his word as a Chief and the value of having a community member who was satisfied were more significant than a marginal savings in price that a move to \$52,000 would have made.

Balsillie was also prepared to exert his influence over Mr. Morin to require Morin to sell his lands as a responsible member of the community should. In some senses

Chief Balsillie acted in a manner which suggested that Morin would take direction from him, because ultimately, in the Chief's perspective, the community came first. He expected Morin to fall into line. He would set the price. The relationship between a Chief and a community member is an extraordinary one, complex in both tradition and personality, and not to be taken lightly.

There is nothing to suggest that Balsillie increased the price to obtain favour from Morin as Premier for himself, for the community or the project. Morin was already a committed supporter of the project and the price was well inside every normative range suggested at the hearing.

The Negotiations for the Morin Land

Mr. Morin's testimony

Mr. Morin advised the Inquiry that he did not participate in further negotiations after he received the Fournier letter, and that he did not negotiate the purchase price. On being questioned by his own lawyer at page 3172 of the transcript Mr. Morin stated:

- Q: And after you received the reply to Mr. Avison's letter from Mr. Fournier did you personally deal with anyone from the Deninu K'ue DKDevCorp or First Nation after that date in respect of the Fort Resolution land?
- A: No, I did not.
- Q: Do you know what price the land was sold to the First Nation at?
- A: Fifty-five thousand.
- Q: Do you know how that price was arrived at?
- A: No, I do not.
- Q: Was there any discussion between yourself and Chief Balsillie at any time before the sale concerning the price?
- A: No.
- Q: Did anyone deal with this matter on your behalf?
- A: My wife dealt with it and Mr. Avison.

There is some further discussion at page 3371 of the transcript which ends with Mr. Morin stating:

- A: ...I've tried to recall that, when that price was offered, or if it was offered to myself and I cannot recall that.

Chief Balsillie's testimony

Chief Don Balsillie describes his dealings with Mr. Morin on the Fort Resolution lands at considerable length.

At page 1638 of the transcript Chief Balsillie describes two telephone conversations. Although there had been many discussions about the project to that point, and even inquiries as to the availability of the Morin lands, it was not until the two week period between April 22nd and May 2nd when Chief Balsillie seriously decided to pry the lands out of Mr. Morin. In an initial call, the Chief "sprung the question on him" of the First Nation purchasing the Morin land. Mr. Morin was not interested.

The Chief called again and the Premier was still reluctant. The Chief tried a combination of pressure and a firm offer as described at page 1641 of the transcript:

A:I said " We need this property. We're going to build. We want it central where people can have easy access to it, and we only have so much dollars in our budget to work with."

And I believe I offered him at that time --- I said "We've got in our budget X amount of dollars. I'm going to --" I didn't tell him how much dollars we had. I said we had X amount of dollars in our budget. " I'm going to offer you \$55,000....

Q: This was the second time you discussed it with ---

A: Yeah.

Q: --- the Premier. How soon after the first time you spoke to him did you have this discussion?

A: I don't think it was very long after that that he came back and said basically, you know, "We are interested."

[...]

Q: You said a moment ago that in your second discussion with Premier Morin, you offered \$55,000?

A: Yes.

Q: Why did you choose that number?

A: Because that was the number we had on our budget....it was going to cost us a heck of a lot more than 55,000 to bring this (the Jones) property to a standard in terms of constructing such a building. I felt by offering 55 it would give him at least a number, which I hadn't given him before, to work with, something to consider.

Chief Balsillie is asked (p. 1649 and onwards):

Q: I believe it was in your evidence that you had discussed a figure before this of \$55,000.

A: Yeah. Yeah.

Q: Did you revisit that with Mr. Morin after --- or with anyone, I should say --- after you received the appraisal? [note: dated July 18, 1996, document 1284-1285]

A: Yeah, when we talked with the Board, I indicated to the Board that I had offered him 55, and that he was quite interested. And after the appraisal was done, it was 52; but we still paid him the 55 because that's the offer I made.

[...]

Q: Now, you described at least a couple of conversations with Premier Morin?

A: Yes.

Q: What happened after that second conversation you spoke of?

A: Once we talked again, we indicated that there were appraisals being done on these properties; and once the appraisals were done on his property, that we'd speak again, which we did. And we both knew that the appraisal was 52, but I indicated to Mr. Morin that I would stay with my offer of 55, because I wanted the property sold --- sold to us, to the First Nation. And our Board didn't have a problem with that number either.

Chief Balsillie is clear and detailed in his statement that he offered Mr. Morin \$55,000 on a number of occasions for the land. The offer was on the table prior to the May 16th Cabinet meeting. The negotiations continued up to and past the receipt by the band of the appraisal dated July 18, 1998. With regard to his dealings with Mrs. Morin, Chief Balsillie states at page 1653:

Q: Had you any discussions yourself with Gladys Morin during this time?

A: At that point? I think the only time I may have talked to Gladys would have been very briefly.

Q: Yes?

A: To mention that it looks like we are moving in a direction where we are going to be receiving this property for the dollar figure that we had mentioned. I think it was just a very brief, a very brief conversation.

Mrs. Morin's testimony

The evidence of Mrs. Morin as received by way of statutory declaration. In her statement she swears under oath that the attached facts are true and complete. Her statements were accepted by all counsel by agreement and she was not required to attend at the hearing to give evidence in person or to be cross-examined.

With regard to the Fort Resolution lands her evidence was:

“The only involvement that Mrs. Morin did have was the signing of the Offer to Purchase. She was not involved in determining a price for the land with the First Nation, or in any negotiations on any other subject with the First Nation. The price had been determined when she became involved in the process.

She and Mr. Morin had discussed the price which was offered by the Deninu K’ue First Nation. She was not sure where the actual selling price came from - perhaps from land titles documents. [...]

Her only involvement in the transaction was to meet with Mr. Beaulieu at the office in Yellowknife to sign the agreement for sale. She had no discussion or negotiations with Mr. Beaulieu. He may have called her up before the meeting, but that would have been her only contact with the First Nation about the transaction before the signing of the offer to purchase. [...]

As stated earlier, I take Mrs. Morin’s evidence to be among the best and clearest received.

In this case I feel I have to accept the testimony of Mrs. Morin, Chief Balsillie and the supporting evidence of Don Avison at page 1878 of the transcript, even though it clearly contradicts what the Premier states.

I accept that Don Avison did some of the paper work and that Mrs. Morin was recruited to sign the offer to purchase which was later submitted to the Clerk of the Assembly, but I cannot avoid finding that Mr. Morin was the main negotiator throughout and that he set the price and other terms of the transaction with Chief Balsillie on or before May 2, 1996. The terms were confirmed in a conversation between Chief Balsillie and Premier Morin after the appraisal was received on July 18th and before the Offer to Purchase was signed by Mrs. Morin July 23, 1998.

Andrew Butler’s Certificate

Andrew Butler the General Manager for the Deninu K’ue acknowledged having written the following, undated, letter. (doc. 3578). Chief Balsillie acknowledged having asked him to produce it. It read as follows:

To whom it may concern

In selecting a site for the new office complex being built by the Deninu K’ue Development Corporation the selection committee reviewed all suitable sites and determined their suitability.

Some sites were eliminated due to location or condition. Negotiations to secure other suitable sites were ultimately unsuccessful. By the end of the

process, the only viable property to consider was the property located by the fire hall near the Catholic Church and across from the arena, although the owner(s) were apparently reluctant to sell their interest, they ultimately did so in the best interests of the community and the Deninu K'ue Development Corporation. All discussions/arrangements were with Gladys Morin, Don Morin took no part in the matter.

Thank you,

I will comment further on this letter under the heading Other Issues - Inaccurate Documents.

The Government Lease

Finding and securing an appropriate site for the Office Complex was only a small part of what was required to get the project underway. Tenants needed to be confirmed for the complex. Because of the GNWT Charity Lease Policy affecting most of the groups, the Government of the Northwest Territories was the most important tenant.

The approval of Cabinet was required for the Department of Public Works, through its Ft. Smith regional office, to enter into a negotiated contract for the lease of space on a charity basis. Any decision would result in changes in capital plans and location for a series of government offices and facilities in Ft. Resolution.

A decision paper was prepared at the Department as of May 14, 1998 and signed by the Ministers of Public Works Goo Arlooktoo, Minister of Municipal and Community Affairs Manito Thompson, Minister of Education Charles Dent and Minister of Intergovernmental and Aboriginal Affairs Jim Antoine. The decision paper was finalized on April 11, 1996, it was the April 11, revision that was before Cabinet on May 16, 1996 (1390 – 1391). It stated on page 5 of 7, under the heading, Other Financial Factors:

“The Deninu K'ue First Nation have advised that Northern Stores have agreed to sell land adjacent to their existing store for this project”

From the above review of the negotiation process, it is clear that the Northern had been out of the picture since early March, 1996.

Although Don Morin knew the Northern was not involved, it was not shown in this Inquiry that the Department of Public Works at that point knew that the lands in question were not to be the Northern Stores lands. That information came to the Department during the week of June 20 1996, well after the decision paper was approved by Cabinet. Vlado Brcic of the Ft. Smith office did a title search and reported to his Superintendent that Don Morin was titleholder to the relevant lands. The Department of Public Works Headquarters in Yellowknife was advised and in reply Mr. Brcic was told simply to do his job. (1925).

Mr. Morin testified that he never read through the Decision Paper and as a result did not know of this falsehood in the documentation presented to Cabinet.

The Cabinet Meeting

The Decision Paper authorizing the lease negotiations went to Cabinet on May 16, 1996. The minutes for that Cabinet meeting were entered as document 10030, but they do not form part of the public record of the hearing. As they relate to this inquiry, they show the following:

*Date: Thursday May 16, 1996
Cabinet Meeting Room Legislative Assembly Building*

The meeting came to order at 10:16a.m. with Deputy Premier Goo Arlooktoo in the Chair.

Members Present:

	<i>Don Morin</i>	<i>Chairman and Premier /Intergovernmental Affairs</i>
	<i>Jim Antoine</i>	<i>Transportation/Safety and Public /Aboriginal Affairs</i>
<i>Services</i>	<i>Goo Arlooktoo</i>	<i>Deputy Premier, Public Works and NWT Housing Corp</i>
<i>Services/</i>	<i>Charles Dent</i>	<i>Education, Culture and Employment/ NWT Power Corp</i>
	<i>Kelvin Ng</i>	<i>Health and Social Services/Justice</i>
	<i>Manitok Thompson</i>	<i>Municipal and Community Directorate</i>
<i>Affairs/Women's</i>	<i>John Todd</i>	<i>Govt. House Leader/Finance/FMBS /WCB/Public Utilities</i>

Officials Present:

<i>Roland Bailey</i>	<i>Secretary to Cabinet</i>
<i>Don Avison</i>	<i>Principal Secretary</i>
<i>Al Menard</i>	<i>Special Advisor</i>
<i>Lew Voytilla</i>	<i>Secretary to FMB</i>

JR Abernathy

Deputy Secretary to Cabinet

Item No. 1 Prayer
Item No. 2 Approval of Agenda - approved as presented
Item No. 3 Approval of Minutes
Item No. 4 deleted as not relevant
Item No. 5 deleted as not relevant

Item No. 6 Negotiated Lease -
Proposed Office Complex in Fort Resolution
Moved by Minister Todd, seconded by
Minister Thompson

1. Authorization for a negotiated lease with the Deninu K'ue First Nation Development Corp.
2. Approval in principle for a revenue lease with the Deninu K'ue First Nation, with no charge for base rent for 210.14 sq. meters
3. Approval for in principle for an additional 82.77 sq. meters if requested by Métis Local #53
4. Requirement to report back to FMB for final approval when leases are negotiated

Motion carried. Record of Decision 96-19-2

Item No. 7 deleted as not relevant
Item No. 8 deleted as not relevant
Item No. 9 deleted as not relevant
Item No. 10 deleted as not relevant

Minister Kakfwi joined the meeting at 10:20am

Information Items

Disposition

The Premier joined the meeting at 10:22am and assumed the Chair.

The meeting adjourned at 10:44 am

signed " Don Morin " " JR Abernathy
" " " " " "
Chairman Deputy Secretary to
Cabinet

As part of Mr. Morin's presentation to the Commissioner in the 81(2) process in May 1988, the Premier's office generated document 246. That document is on Executive Council letterhead and is dated May 15, 1998. It reads:

To Whom It May Concern:

Negotiated Lease - Proposed Office Complex in Fort Resolution

We confirm that in respect to the Cabinet Decision on the above issue Premier Morin declared a conflict of interest and left the meeting room taking no part in the discussion or decision."

Document 246 is signed by the Honourable Goo Arlooktoo, Deputy Premier and Minister of Employment, the Honourable Charles Dent, Minister, Education Culture and Employment, the Honourable John Todd, Minister of Finance and the Honourable Kelvin Ng, Minister of Health and Social Services

Premier Morin states that it was drafted in his office and that he approved it prior to it being circulated personally by his Principal Secretary among the Ministers for signature. (p. 3337)

The two documents do not appear to agree as to what happened.

Mr. Morin tries to reconcile the two by stating that prior to the meeting beginning he entered the Cabinet room, announced his conflict and then left, only to return after the item was dealt with. He asked Minister Arlooktoo to take the Chair.

Of the Ministers present who did not sign the document, the Inquiry heard from Ministers Kakfwi and Antoine. Minister Kakfwi understandably remembers nothing as he was late for that meeting (p. 3057). Minister Antoine (p. 2249) has no memory of any declaration or departure, but thinks that Morin was not present when the decision was made. Principal Secretary Avison also had no recollection of hearing a declaration (p.1887-88).

Of the Ministers present and signing document 246, the Inquiry heard from Ministers Todd and Arlooktoo.

As to document 246, Minister Todd was asked:

Q: Is 246 correct? Is the statement you signed correct? Did Mr. Morin declare a conflict and leave the meeting?

A: I believe that he wasn't at the meeting.

Q: But did he declare and leave?

A: *I don't recall.*

[...]

Q: *Would you sign 246 again today, or would you ask that it be changed in terms of its wording?*

A: *We would probably need more clarity on it, yes. (p. 2172)*

It was Minister Arlooktoo who took the Chair, but he had no clear memory of the reason why that happened. He was questioned regarding document 246:

Q: *It says here that Mr. Morin declared a conflict of interest. Did that happen? (p. 2216)*

A: *I cannot recollect this point if it happened or not.*

[...]

Q: *Would you sign the same letter today, or would you ask for some changes?*

A: *I would have that changed just to say that Mr. Morin took no part in the discussion or decision.*

Given the weakness of the support on cross-examination for document 246, I do not consider it to have any probative value in this proceeding.

There is no proof, other than his own testimony, that Mr. Morin made any declaration before the Cabinet meeting. An unheard declaration before the meeting starts is not a declaration. A meeting which has not started is not a meeting. Premier Morin signed the Minutes personally. The Minutes say he was present at the meeting.

I understand and accept that the Premier was not present when this matter was discussed. That is both important and a sign of good faith, but it may not be adequate to meet the standard required by the Act.

I will comment further on document 246 under the heading "Other Matters - Inaccurate Documents."

Communications with the Department of Public Works

At this point, the focus turns to the Department of Public Works to establish the relevant leases for the office complex.

There is a direct link between the sale of land and the need to have the lease approved. The Offer to Purchase (document 3583) in paragraph 13 states that the sale transaction is subject to:

“(a) the Purchaser obtaining financing satisfactory to it no later than July 29, 1996.....”

The financing, which was to come from the Business Credit Corporation, was dependent on the DPW head lease being successfully negotiated.

There are three documents from the records of the Department of Public Works which show contact between the Premier or the Premier’s office and the Department of Public Works. Each is encouraging progress on the Ft. Resolution lease. These are:

1. An e-mail from Bob Doherty to Les Clegg, with copies to Sue Bevington, Randy Cleveland and Ralph Shelton, dated February 23, 1996 (document 7545). The email reads:

*Subject: Fort Resolution mall
Don Morin commented to me the other day about the apparent lack of progress, and his concern that, given the GNWT/PWS leases are the cornerstone of this project.*

Can you advise status and what is required to move this along?

The Premier denies having contact with Beaulieu or Doherty in relation to the Fort Resolution office complex (p.3177). Despite Mr. Morin’s denials that he made the contacts referred to, I take this email as true and accurate. However, these contacts occurred before any date when it is alleged that the First Nation made an attempt to purchase the Morin lands, and before he received the Fournier letter. I am prepared to find that this approach to Bob Doherty was made by Mr. Morin without the knowledge that the Morin lands would or could be involved.

2. An e-mail from Ken Lovely (DM of Public Works and Services) to Roland Bailey (then Secretary to Cabinet), with copies to Ferne Babiuk (Executive Asst. to Mr. Morin), Sue Bevington and Laurie Holmes dated July 19, 1996 (document 7610):

Following up our conversation yesterday about the Ft. Resolution office complex, I have attached the briefing note prepared. I was concerned about the situation because I was also aware that Danny Beaulieu of Ft.

Resolution had contacted the Premier's office to arrange a meeting on this subject for Monday.....

[....]

In spite of the fact that we technically need FMB approval to go further, I don't think it is fair to ask the Corporation to wait until the next FMB meeting to give that approval. They'll lose the majority of the construction season! On that basis, I faxed them a letter of intent this afternoon. I think it is resolved. I'm at home this afternoon at 873-2628 if there are any problems.

In cross-examination, Premier Morin specifically denied having met with Danny Beaulieu after negotiations for the sale of his land began. He said he was not aware of any communication by Danny Beaulieu with his office in regard to a meeting to talk about the development, and unaware of any communication between Mr. Lovely and the First Nation in regard to the development. This specific e-mail was not put to him, nor was it addressed in examination in chief by his lawyers.

3. A briefing note prepared for the Secretary to Cabinet and Executive Assistant to Premier on July 19, 1996, which identified Premier Morin as the affected MLA in relation to the development (document 7611). The briefing note reads, in part:

The Premier's office has advised PWS that Dan Beaulieu from the First Nation has asked for a meeting with the Premier on Monday, July 22 to discuss the office complex. The First Nation has concerns about delays receiving formal approval to commence the project. PWS will give a written commitment to the Corporation immediately so that construction can commence'

The second and third documents show contact between Mr. Morin's office and the Department of Public Works in July 1996. These two communications occurred after the Department of Public Works Headquarters had been advised that the project was proceeding on Morin lands. They occurred after Mr. Morin and Chief Balsillie had set the price for the lands.

Whether or not the proposed meeting with Danny Beaulieu actually took place, it is clear that the Premier's office was making inquiries in support of this project at a time when it was beyond question that the land involved was that of the Premier, and that he would profit from the approval of the very lease being discussed.

As an aside, I take it that this trip to Yellowknife from Fort Resolution by Mr. Beaulieu was the same trip during which, on July 23, 1996, Beaulieu met with Gladys Morin in order to have her sign the Offer to Purchase for the Morin land.

Premier's office / Ministers office are in touch on this one. Region should tell the client that the same is "in the system".

A trust cheque from the law firm of Gullberg, Weist and MacPherson was issued to Gladys Morin on September 23, 1996, on the amount of \$54,940.18, closing the land deal with Mr. Morin.

Reasoning

Not a benefit arising out of the Member's office

The first main issue is whether a reasonably well informed individual would perceive that the decision or price were influenced by that fact, given the shortage of documentation, the documentation which does not match the actual process, the unusual dealings with the appraiser and the position of the Premier.

It is clear that Mr. Morin benefited from the sale of his lands to the DKDEVCORP. He had bought them in 1986 for \$10,000. Ten years later, Mr. Morin realized the sale of his lands for \$55,000. Although there was some mention of improvements to those lands and one should not discount the effect of inflation, it is clear that Premier Morin earned a hefty profit on the lands which constitutes a benefit to him. However, for the purposes of the conflict of interest provisions of this legislation, there are no general restrictions on Members earning significant profits on their investments, or on accrual of the benefits, which are normally associated with large profits.

The only benefits restricted by the conflict of interest provisions of the Executive Council and Legislative Assembly Act are benefits which are connected to performance of duties of office, or which somehow arise through the Member's public office.

I have found that the selection of the Premier's lands reflected the priorities and interests of the First Nation. There can be no question that the selection of those lands related to the Premier's office.

The fact that there was an appraisal for \$52,000 and the land was ultimately sold for \$55,000 is not, in itself, determinative of the question of whether there was a benefit. First, the price was still in the range suggested by the appraiser. The Act suggests one must look beyond that fact to consider why the slightly higher price was paid.

I also find that as a consequence of those inquiries the leasing process for the Ft. Resolution Office complex was advanced. Mr. Lovely made the written commitment immediately on the lease, without waiting for the usual FMB approvals. I also note that he left his home phone number in the event of any problems.

I do not find this typical of the way an ordinary leasing issue would be dealt with in the Department of Public Works.

The Government Financing

Even with the lease agreement in place, it was still necessary to obtain long term financing for the project. For this the DKDevCorp turned to the Northwest Territories Business Credit Corporation (the "BCC"). The records of the Business Credit Corporation show the following:

The DKDevCorp made an application for financial assistance, dated August 8, 1996, by way of a proposal prepared by Fraser, Matthews & Co., and dated June 4, 1996. The letter of Larry Jones dated May 24, 1996, was annexed to the initial application as justification for the land costs of \$55,000 and as an indication of where the complex would be constructed.

On August 12, 1996 it was replaced by the Gladys Morin offer to purchase, which was for the same amount.

The application was considered by the board by telephone and approved August 29, 1996. Sitting on the Board were Al Woodhouse, Chair, Freida Martselos and Mark Kalluk. The approval appears to be very ordinary.

The application was sent to Minister Kakfwi for his approval in September, 19, 1996 as it was over the \$500,000 level. It received that approval September 20, 1996 after a request for additional documents.

There are two notes on the BCC file, which relate to Premier Morin or his office. On September 12, 1996, Gayle Buckle, BCC's lending officer, wrote the following as part of an E-mail which appears as document 11998

I believe that you also requested an update on Deninoo. The minutes have gone to the Minister who is out of town. The letter of offer has been prepared and awaiting Minister's approval. DM Secretary is trying to get acting Minister to sign. You might also like to know that the Premier's office called on the status of this file yesterday.

A hand written notation appears on this page. Afzal Currimbhoy stated in his sworn evidence that it is in his handwriting (see Ex. 7A). It states:

[...]

I found on the evidence that Chief Balsillie had offered Premier Morin a price of \$55,000 and, for whatever reason, did not treat the appraisal as a reason to lower the price he had offered. I found on the balance of probabilities that the Chief's actions in the respect were not owing to the Premier's office.

In light of those findings, I conclude that Premier Morin was entitled to sell his land on the agreed terms. He seems to have made a good investment. The benefits he received did not arise out of his office.

Use of office to advance the interests of Nova Construction

As noted in the previous section under the heading "Nova Contracts", there were only two contracts awarded to the Nova companies on a non-competitive basis. Both of them were contracts for tenant improvements in the Fort Resolution office complex.

Bonnie McTiernan-Craig testified that tenant improvement contracts were often awarded on a sole source basis. There was no evidence that Premier Morin used his office to advance the interests of the Nova companies.

Obligation to Declare a Conflict

I have extensively reviewed the evidence (above) relating to the Premier's participation in the Cabinet meeting of May 16, 1996. Based on that review, I have concluded that the Premier did not meet the requirement of the Act that, as a Member, he disclose his interest and refrain from participating in debate or voting.

Mr. Hustwick argued convincingly that the standard Premier Morin was required to meet was that of a Member of the Legislative Assembly (s.69(1)) and not that of a Minister (s.69(3)). If Premier Morin had been required to meet the standard governing the conduct of a Minister he would be required to disclose his interest, refrain from attempting to influence the decision, and to delegate to another person his role with respect to that issue. Mr. Hustwick argued that in this context the Act only requires the Ministerial standard to be applied where the issue is a matter within the Minister's portfolio. The text of the Act supports his position.

There is no question that the Premier refrained from participating or voting where the Executive Council was discussing the transaction involving his lands. However, the Premier did not meet the standards required for disclosure.

The intent of the disclosure requirement is to put the Member's peers on notice of the possibility of conflict. It is anticipated that this is an effective mechanism for ensuring appropriate scrutiny of a transaction where there is a lurking potential for conflict. The purpose of the disclosure requirement is completely negated where there is nobody to hear the declaration.

Within the terms of the Act, a declaration no-one hears is not a declaration. Failure to declare your conflict is a violation of the Act.

The significance of this requirement is illuminated in the context of the next issue.

Use of the Premier's Office to advance the sale of his land

There is a prohibition in the Act against use of public office to affect the decisions of any one, particularly in a case where there is the potential for private gain. In addition, Commissioner Fournier had given the Premier specific instructions that to avoid a conflict of interest situation

There were two significant Government of the Northwest Territories decisions that could affect the sale of the Premier's lands: the decision about the lease by the Department of Public works, and the decision about financing by the NWT Business Credit Corporation as to whether there would be financing available. The financing decision depended on the lease.

The documentary evidence before this Inquiry suggests that the Premier's office, if not the Premier himself, was involved in the decision about the lease. Email correspondence

from Ken Lovely, identifying concern from the Premier's office, shows the Department of Public Works accelerating their lease approval process in order to ensure that the First Nation was able to take advantage of the full construction season. A briefing note cites contact from the Premier's office trying to speed up the approvals process in time for a meeting with Danny Beaulieu that was scheduled to take place there.

I recognize that this is proof that the Premier's office was involved in trying to influence a public decision (successfully, I might add), and does not show direct involvement by the Premier. It is quite possible the Premier's staff was not acting on his instructions. Clearly the project was an important one in Fort Resolution.

However, in light of the importance of avoiding a conflict of interest relating to his land sale, the Premier was required to take active steps. He should have communicated with his staff to make sure his interest in the land was understood, and to have ensured that they did not get involved. Such communication was necessary to ensure his position as Premier did not become a factor in the government process which may have affected the sale of his lands and any benefit he might receive from that transaction.

The failure to clearly and openly declare his interest, in the Executive Council and to his staff, lead directly to this violation. In selling his land, Premier Morin had done nothing wrong and on all the evidence, helped the First Nation with an important community project. In failing to be forthright in disclosing what he had done, the Premier committed several serious violations of the Act.

Full and accurate disclosure of potential conflicts of interest is a basic principle of the Act and an essential element in avoiding the problems that can accompany a conflict of interest.

The House

Issues

Is Mr. Morin's occupancy of the house at 43 Otto Drive a significant private interest and do the circumstances of that occupancy constitute a direct or indirect benefit to Mr. Morin or his family which arises as a consequence of his office?

Relevant section 66(1)

In relation to the house, did Mr. Morin comply with his obligation to refrain from accepting any remuneration or benefit, the acceptance of which might erode public confidence and trust in the integrity, objectivity and impartiality of the member?

Relevant section 67(b)

Facts

The Morins' occupancy: background

Gladys Morin, the wife of the Member, made a Statutory Declaration (Exhibit 5C) affirming the contents of a Summary of Expected Evidence which sets out the basic facts of the circumstances under which the Morins came to reside in the house at 43 Otto Drive. Subject to certain, limited comments where there is a conflict in the evidence, I accept the Mrs. Morin's Summary as accurate. As it relates to the house, I reproduce it in full below:

"Mr. and Mrs. Morin occupied a staff housing home owned by the GNWT in Yellowknife which was located on School Draw Avenue. In 1993, the GNWT decided to sell its staff housing.

When the decision to sell staff housing was made, Mr. and Mrs. Morin were contacted by a local realtor, Marie Coe, who indicated that she would be available to show them houses.

The Morins were not sure what they were going to do. They had the option to buy the home in which they were living. They liked the location - close to town, and the size - the home had six bedrooms.

The Morins have four children, who are now aged 24, 21, 18, 15, and a grandchild. Their eldest child is away at school and the middle two children work outside of Yellowknife. All three come to Yellowknife frequently, and when they do they stay with Mr. and Mrs. Morin. Their grandchild does not live with them but they see her frequently.

In June 1996, there was a large storm which gave rise to severe flooding conditions. The flood caused considerable damage to the home in which

the Morins were living, and was a traumatic experience for Mrs. Morin and her family. After that, the Morins decided not to purchase the home in which they were living.

The Morins had been looking at other homes before June of 1996, from time to time. After the flood, they continued to look for homes. The Morins receive a Ministerial allowance of \$35,000.00 per year to cover rent and other housing costs.

They made the decision to treat that amount as their housing budget. Some of the newer homes they looked at to rent (in the Frame or Range Lakes area) were very nice, but out of their budget, costing more than the amount of the housing allowance.

Mr. Morin had spoken to Mr. Mrdjnovich to ask him to take a look at the home on School Draw Avenue in which they were living in to see if it was worth buying. Mr. Mrdjnovich came to their house a couple of months before the flood to take a look at it. Mrs. Morin thinks that may have been the first time she met Mr. Mrdjnovich. Mr. Mrdjnovich told them that it was an old house and would cost a great deal to renovate.

Mr. Mrdjnovich knew that Mr. and Mrs. Morin were looking for a home. He showed them a house on Stevens Crescent owned by Nova but they did not like it. In the meantime they kept looking at houses with Marie Coe.

Mr. Morin met with Mr. Mrdjnovich and talked to him about Nova building a home if the Morins agreed to rent it. Mr. Morin told Mr. Mrdjnovich about their Ministerial housing allowance.

There were a couple of lots that Mr. Mrdjnovich had in mind and asked the Morins to look at. One was close to School Draw Avenue, and close to the lake. Mrs. Morin described it as a nice lot. The other was a lot in Ndilo - the lot on which the home was ultimately built. Mrs. Morin liked that lot because it had lots of room around it - being from a small community she liked lots of space. It had lots of space around it. The lot close to School Draw was closer to its neighbors. She also liked the idea of living around aboriginal people, which would be the case with respect to the lot in Ndilo. The Morins indicated that they liked the lot in Ndilo the best.

Mr. Morin asked Nova to draw up plans for a home to see whether he and Mrs. Morin would want to rent it. Mr. Hilchey drew up plans. The Morins liked them. Mr. Mrdjnovich agreed that the rent and services costs on the property would be equivalent to the Ministerial Allowance.

After finding the lot and approving the plans, the Morins may have looked at a couple of more houses. At some point, however, they stopped looking. They made a verbal agreement to rent the home on Otto Drive, sometime after seeing the plans. The Morins stayed in the house at School Draw until they moved in January, 1997.

Before the drawings for the home were produced, Mrs. Morin spoke to Mr. Hilchey about what they wanted in a home. She told him that she liked the open air concept and told him about the number of bedrooms they needed, enough so that they would have a bedroom for each of the boys.

The Morins made a couple of changes to the design produced by Mr. Hilchey - they asked for track lighting in the family room, florescent lighting in the kitchen, and Mrs. Morin added a window in the room upstairs next to the master bedroom. Mrs. Morin was planning to use that room for crafts and wanted to have the extra light. Mrs. Morin chose the paint colours for the home, to match her furniture. She chose the carpeting also. When it was installed, the carpeting was of a lesser quality than she had chosen, but the same colours she had chosen.

The final home was bigger than the original drawings. That was because the home had to be sited closer to the front of the lot than had been originally planned, with the result that the basement became larger. The change was made necessary by the fact that the back part of the lot was thought to be an unstable a surface on which to build.

The Morins entered into a three year lease with Nova, from January 1997 to the end of December 1999. There are no agreements between the Morins and Nova with respect to the home after that time."

Evidence on the timing of the verbal agreement to rent the house on the part of the Morins conflicted. According to Mr. Mrdjenovich, he had an "understanding" with the Morins that he would build them a house on the old town lot; this appears to have been his understanding at the time he purchased the lot. Mr. Morin claimed that there was no agreement that they would definitely rent the house until the middle of December, when he and Mr. Mrdjenovich settled the rental price and shook hands (p. 3130). According to him, until that time he could still have said "thank you, but no thank you" and walked away from the house (p. 3144). To the extent that it is relevant, I prefer the evidence of Mrs. Morin on this point. It was the position of the Premier's counsel, in the process to determine whether there should be a hearing in this complaint, that the Morins "agreed to erect a residence on a lot in consideration of Premier and Mrs. Morin entering into a fixed-term lease at a monthly lease rate of \$2,800." Mr. Morin denied that this was an accurate statement in this proceeding (p. 3220).

There was also conflicting evidence as to the parties' expectations about the amount of rent. All three agree there was no firm agreement on price until December. However, the Morins both testified that they made it clear to Mr. Mrdjnovich that they wanted a rent that fell within their housing allowance of \$35,000 per annum. Mr. Mrdjnovich maintains that he made a commitment to them that the monthly rental would fall in the range of \$2500 - \$3500 per month, depending on Nova's costs of construction.

There does not appear to have been any discussion as to what those costs of construction were in determining the rent. Premier Morin testified that he did not ever consider how the cost of the lot on which the house would be built would affect the price for the lease, and that Mr. Mrdjnovich did not tell him the price range he had in mind for the house. In this Inquiry, even after significant efforts, there has been no complete costing on the house.

When the lease was signed it set the rental rate at \$2800 (annual total \$33,600), which fell within the Morins living allowance. Based on the available evidence, I conclude that Mr. Mrdjnovich appears to have built the house for the Morins to lease for their ministerial housing allowance plus services.

These facts should also be considered in light of certain comments on the part of Premier Morin and Mr. Mrdjnovich. The Premier acknowledged in his testimony that he had discussed taking political "heat" over the house with Mr. Mrdjnovich when they began their discussions about the construction. Mr. Morin said he raised the subject of heat with Mr. Mrdjnovich "[b]ecause it was going to happen. I knew that." (p.3234) He said that people would give him grief over the house until they knew the facts.

Nevertheless, the Premier did not, at any time, use the option provided for him under the Conflict of Interest legislation to seek the advice of the Commissioner (s.79.2). The legislation provides that no proceeding or prosecution shall be taken against a Member who provides all material facts and receives and follows advice under these circumstances (s.79.2(5)). Premier Morin advises that he was aware of that process and how it worked.

Mr. Mrdjnovich, in his testimony, defended the house transaction on three main bases: business, politics, and a possible home for himself.

He consistently defended his involvement as being an investment decision. However, the following extract from his testimony on direct examination is revealing (p. 2791):

Q: What was it that led you to help him [the Premier]?

A: ... its the same as one of the other clients. ... Why we helping other people we deal business with? Just a straight business deal.

Q: It was business?

A: And it's nice to know the Premier.

Apart from the facts about the transaction set out above, there was significant evidence called in order to estimate the value of the Morin house and to determine whether the house was in fact a reasonable business proposition for Mr. Mrdjnovich.

There was significant disagreement about the value of the house Mr. Mrjenovich constructed for the Morins, and about the reasonableness of the rent charged.

There was detailed evidence about the house as a commercial proposition for the builder and landlord. There were two appraisals of value prepared by the firm of Stewart, Weir, MacDonald. Each of those appraisals was signed by Lauchlin MacDonald AACI, whom I accept is a qualified appraiser.

The first appraisal was prepared August 1, 1996 during construction and the second was dated February 17, 1997 after completion. The first appraisal fixed the total costs at \$491,200. The second fixes the total final costs at \$559,400. As noted, the actual costs of building the house still have not been finalized.

According to counsel for Mr. Mrdjnovich on the final day of argument, excluding typical real estate expenses such as legal and financing costs and the cost of Mr. Hilchey's design work as a salaried employee, the total cost was in the neighbourhood of \$475,000. This is the total of actual costs, and does not include a margin of profit, as would be typical for a builder.

I find that the discrepancy between Mr. McDonald's second estimate and the actual cost of construction, a number certainly under \$500,000, is insignificant except as another reflection of Mr. Mrdjnovich's business acumen and economy as a builder.

The market value in the first appraisal was estimated at \$400,000; in the second, at \$475,000. For the purposes of this inquiry, I will accept that the market value of the house is \$475,000 based on Mr. MacDonald's second estimate. In accepting this, it is necessary to note that, even with Nova's famed "sharp pencil", is this not a profit scenario. Nova had to write off any profit on the construction site.

The house was subject to a twenty-five year mortgage, which was amended by way of caveat to increase the principal amount and extend the date on which the balance was due. (See docs: 7385-7393, mortgage; 7394-7395, caveat; 7396-7398, amending agreement and transcript at p.2811). The finalized mortgage provided for a principal amount of \$320,000; monthly payments of \$1,897 with the first payment due May 1, 1997 and the balance due on April 1, 1998. The annual interest rate on the mortgage for a one year term was 5.2%, which Mr. Mrdjnovich testified was a good rate that he was able to obtain because of his active participation in the mortgage market.

As noted above, the house was leased to the Morins for a three year term, at a rental rate of \$2800 per month (see document 270). The other significant term of the lease was an agreement that either party could end the tenancy, without cause, on three months notice. This term of the lease is consistent with the requirement in the Ministerial Administrative Procedure regarding Reimbursement for Cost of Temporary Accommodation in Yellowknife (Doc 5712-5715). The procedure requires that Ministers to make every

It is clear that Mr. Mrdjenovich at least was aware that his business decision-making reflected the possibility of some political advantage to him in helping the Premier. He also stated that he had shown the house to many many people when it was known that he was building the Premier's house. This was clearly a business advantage to him and he saw it as improving his reputation. He testified:

A: ... I think this house been built for the Premier within mind that some day I might live in the house; that some day this house being shown as potential show home, which I show people what we can do; that we are not a very little company anymore, that we are a mid-sized construction company; that we can do the quality work; that we can do this.

And I don't think I had to seen myself, but I think I have to, even in this late date, maybe -- I was lacking a little image. And I'm still lacking a little image.

I tried to – this house was not just a cost house that you can – ordinary. This house has been designed and built a little more – (p. 2827)

Counsel for Mr. Mrdjenovich and for Premier Morin also placed weight on the possibility that he might move into the Otto Drive residence himself if the Morins vacated the premises. It is true that Mr. Mrdjenovich did refer to the possibility that he would like to move into the house. However, he appears to have been speaking in a rather hypothetical manner. He also said in the same breath that he might start wearing suits one day and “could become a big shot overnight” (p. 2798).

There was evidence that Mr. Mrdjenovich was having cash flow problems during the time he built the house. Evidence admitted by way of statutory declaration by Mr. Girvan, an associate of Mr. Mrdjenovich, shows the latter seeking a \$50,000 personal loan. And Mr. Mrdjenovich amended the amount of the principal of his mortgage on the house to increase it by \$20,000.

Value of the House

effort to negotiate early termination clauses limiting the exposure of the GNWT to additional costs.

The Commission heard some evidence regarding the rental market in Yellowknife at the time that the house was built and rented. Mr. Mrdjenovich made reference to several other properties which had been standing vacant or which had been rented only after a reduction of rent. There is no evidence as to the market rent for a \$475,000 house. We heard from Mr. Mrdjenovich's that he was planning to charge between \$2,500 and \$3,500 per month, and from Mrs. Morin on this basis that there were some newer homes to rent in the Frame or Range Lakes area which were very nice, but out of their budget. I find that \$2,800 was not the top of the rental market. For the Morins \$2,800/per month for a house that was custom-built and described by its builder as 'the' house in Yellowknife (p. 2797) was, put simply a good deal.

Guy Bourgeois was qualified before the Commission as an expert in commercial and residential real estate appraisal and in real estate investment analysis. Closing submissions of counsel for Mr. Mrdjenovich and Mr. Morin have not dissuaded me from my decision that Mr. Bourgeois was suitably qualified as an expert, despite a relative shortage of experience in the real estate market in the Northwest Territories. I do not consider this factor invalidates in any way his statement:

Generally speaking, those investing in real estate will expect a return on investment between 10% - 20%. If an investor were to understand the monthly rent for any property to be \$2,800, one would expect that investor to invest no more than \$300,000 in the development of that property to ensure that he received a reasonable return. (Exhibit 4A, App.C)

I take this to be true in Edmonton or Yellowknife, or any other location. Money is money.

In summary, I draw the following conclusions of fact:

1. the Morins had determined that they were not going to stay in government housing, which did not meet their needs.
2. the Morins were actively looking for rental accommodation on the open market, but there were few options which Mr. Morin felt were appropriate. Any of the houses that appeared to meet their needs were too expensive.
3. whether or not the house meets a formal definition of a “custom home”, the Otto Drive house was custom built for the Morins in accordance with their specifications in terms of lot, space required, design and finishing including windows, colours and carpeting.
4. the Morins’ only commitment to Mr. Mrdjenovich is a three year lease at a monthly rent of \$2,800., which is scheduled to end in December 1999 and which can be terminated on three months notice by either party.
5. the market value of the house is approximately \$475,000. This means that Nova Construction made no profit on its work in constructing the house.
6. the cost of construction of the house is more than \$475,000, though there are still no exact figures for the total cost.
7. Premier Morin was aware he would take “political heat” for the house.
8. Mr. Mrdjenovich considered the deal potentially politically advantageous. He thought of the home as a potential “show home” which could improve Nova Construction’s image.
9. Put simply, the Otto Drive lease was a good financial deal for the Morins, and a marginal or poor financial deal for Nova Construction.

Private Interest/ benefit

The evidence relating to the value of the house is relevant to the question of whether the house was a reasonable business proposition for Mr. Mrdjenovich. If it is concluded on all the evidence that the house was not a reasonable business proposition for Mr. Mrdjenovich, that raises a strong inference that Mr. Mrdjenovich, by building that house and leasing it to the Morins on the terms he did, conveyed a significant benefit to them. Such a benefit would be a personal benefit to the Member and his family, and would engage s. 66(1) and s. 67(b) of the *Legislative Assembly and Executive Council Act*.

The fact that the Morins got a very good deal on rental housing would not, without more, indicate that a benefit had been conveyed to them by their landlord. There are circumstance where good deals are available. However, in this case, there are several other factors that suggest strongly that a benefit was indeed conveyed to the Morins by Mr. Mrdjenovich.

The starting point is the significant -- and I believe uncontested -- evidence of Mr. Mrdjenovich's business acumen. Mr. Mrdjenovich is identified as having a "sharp pencil" and driving a hard bargain. Not a bad bargain, I would emphasize, but a fair, hard bargain. His ability to build the Morins' house for under \$500,000 where a qualified appraiser estimated that it would cost \$569,000 to build is only one of the many examples shown before this Commission.

Against that backdrop, the evidence is clear in showing the construction and rental of the Morins house as a very weak business proposition with, at best marginal profitability. Based on the figures before the Commission, in building this house for the Morins to lease, Mr. Mrdjenovich built a house where the cost of building the house exceeded the market value. According to Mr. Bourgeois, whose evidence I accept on this point, the highest and best use for property of this type is to be occupied by an owner who derives non-monetary benefit from this occupancy. Typically, houses of this type are not built as an investment but rather to be occupied by the builder and his family.

If the house was indeed built as a rental property and an investment, there is a strikingly low rate of return on the property. It is also clear that there are significant risks associated with the tenancy from the perspective of re-sale or vacancy. I reproduce in Appendix "D" a relatively straightforward calculation that shows that the rate of return on Mr. Mrdjenovich's investment is approximately 8.8175%. That calculation assumes he is able to maintain occupancy in the house and his excellent interest rate of 5.2%. It assumes no profit from construction. It assumes that Mr. Morin is entitled to benefit, at no cost, from all Nova's skill, contacts and experience in the construction industry.

Mr. Mrdjenovich was having cash flow problems at the same time he financed and built the house. This points away from the conclusion that building and leasing the house made commercial sense.

As noted above, at the time that the house was built there was a relatively small pool of potential tenants for Yellowknife's high-end market. The Morins were free to leave on three month's notice, so Mr. Mrdjenovich was facing a real possibility that the house would sit empty if Mr. Morin was not re-elected in 1999 or if, for some other reason, terminated the tenancy early. These are risks that a reasonable person would take into account in assessing the value of an investment property.

In summary, I do not find that this was a commercially reasonable transaction. In my judgment, the Morin's received significant personal benefit from Mike Mrdjenovich through the construction of the Otto Drive premises and the terms of the rental agreement.

First, there is the non-monetary benefit they received by having the house built to their specifications, particularly after having had a difficult time identifying suitable housing on the open market. The case law on conflict of interest is clear that it is not only pecuniary benefits which can constitute a benefit: *Blencoe*, p. 29.

Second, there is the favourable rent received by the Morins, which is particularly notable as neither of them appears to have considered the costs associated with construction as a factor that would affect their rent.

Third, there is the fact that the house was built as a lease property with a lower market value than its construction cost.

Fourth, there is the very low rate of return on Mr. Mrdjenovich's investment, combined with the risk of vacancy he was absorbing. Especially for such a skilled and successful businessman, entering into such a low return and high-risk situation must be understood as a transfer of value from him to the Morins, and a benefit to them.

Based on my finding that the house rental to the Morins was not commercially reasonable and that they received a benefit by living there, I am forced to conclude that Premier Morin is in breach of s.66(1) and s.67(b) of the *Act*.

Mr. Mrdjenovich's testimony – that it is good to know the Premier, that he had many requests to see the house – is clear evidence that this benefit was a consequence of the Premier's office.

When the Morins agreed to have a house built for them and moved in Mr. Morin breached his duty to refrain from accepting any benefit which might erode public confidence in his integrity and impartiality.

Premier Morin was aware that he would face "heat" yet failed to follow the procedure under s.79.2 by which he could seek the advice of the Conflict of Interest Commissioner and, if he followed it, be guaranteed that no proceeding would be brought against him. This is a serious breach.

Lahm Ridge Tower

Issues

Did Mr. Morin have a role, direct or indirect, in the decision to extend the Lahm Ridge Tower lease? If so, did he act in a manner to maintain public confidence and trust in his integrity and impartiality?

Relevant section: s. 67(a)

Did Mr. Morin have a private interest which affected the performance of any public duties in relation to the Lahm Ridge Tower Lease renewal, including the subsequent defense of the renewal decision? If so, did he act in a manner to maintain public confidence and trust in his integrity and impartiality?

Relevant sections: s. 66(1) and 67(a)

Facts

The original lease

In 1985, when the demand for office space in Yellowknife was high, a small group of local investors built the Lahm Ridge Tower (LRT), a three story office building with a large floor plate and entrances on two levels. It had accessible parking and was built with a potential for expansion. The design was well thought through and the location was good, although slightly away from the main business areas in Yellowknife.

The corporation holding the property was Lahm Ridge Investments Ltd. The ownership of the building changed over time, to the point that the only remaining owners were Hazel and Al Marceau, long time Northerners now retired and living in British Columbia. I intend to use "Marceau" to refer to both the Corporation and the owners, unless the context requires that they be separately identified.

Marceau entered into a series of leases with the Federal and Territorial Governments for occupation of the offices. Eventually, with devolution of Health Services from the Federal to the Territorial government the entire building was rented by the GNWT. The leases were consolidated into a single lease which expired for the whole building on November 30, 1995.

The Marceau attempts to renew

Starting in September 1995, when the lease on the tower was about to run out, negotiations for the renewal began between Marceau and the Department of Public Works. There was a healthy exchange of positions and on November 20, 1995, Ken

Rankin of that department recommended a renewal to his superiors (doc. 547). The relevant terms of the renewal were:

- Renewal for one five year period
- Base rent the same. Operating costs will still be paid as “additional rent”
- Operating costs to be reduced by \$42,000/yr. from 1994 rates
- Replace HVAC system - at a cost of \$125,000
- After Jan 1, 1999, on six months notice, Government can reduce lease space in blocks of 5,000sq. ft. but must pay a penalty of 3 months rent including utilities on vacating.

I will be referring to these terms as the Rankin Terms. The terms were acceptable to Marceau.

The prospect of any renewal was greeted with less enthusiasm by Mr. Rankin’s superiors. Between the effects of division of the Territories and downsizing in government, the Department already knew it was facing a surplus of office space in Yellowknife, and felt that a renewal would not be appropriate. There was, as Rankin noted in the file: “too much change in Gov’t - no decisions from headquarters - everything stopped”. No doubt feeling some insecurity in what had become an overholding situation, on December 26, 1995 Marceau offered to reduce the rent on the basement space in the Tower by \$1.00 per square foot per year (doc 554). It is confirmed that this was implemented in the June 10, 1997 letter of Ralph Froment (doc 9156).

In a letter dated January 4, 1996 (doc 7356) Ken Rankin advised that he was “still working on the finalization of the lease renewal and have received instructions to downsize our total number of employee parking stalls”. In return, the GNWT wanted and received a \$1,400.00 per month reduction in the rent.

The renewal was still not forthcoming. The political and administrative situation had not been resolved. In August, 1996 Vince Dixon was given responsibility as Regional Superintendent for the North Slave Region, which includes Yellowknife. He reviewed all the commercial leases and was concerned that the LRT lease might have been renewed inadvertently by Rankin who had not sent a formal refusal to renew.

In an e-mail exchange with Ken Rankin that occurred all on December 17, 1996, Vince Dixon refers to being in the midst of reviewing the Yellowknife office space needs now and toward Division. This was the project that was to become, over the next 6 months, the Yellowknife Office Space Rationalization Plan Options Paper.

Rankin replies (doc. 766) that there was no renewal, but adds what becomes an oft-repeated refrain with regard to this building:

“The landlord is in a very insecure position at this time. Not only has the lease expired, but the mortgage has expired, and trying to obtain mortgage money for commercial properties these days is, to say the least, extremely difficult, due to previous and current property failures.”

In reply (doc. 770), Dixon captured the prevailing attitude in Public Works towards office space in the capital:

"The last thing we need right now is an additional 42,000sq. ft. locked in until 2001."

After further exchange, Dixon decided to write a letter which clearly stated that there would be no renewal for Marceau. He did so on February 10, 1997. His letter (doc 7359) states:

"...the Department ...has recently completed a status report focusing on the GNWT's present and projected long term contractual needs regarding general office, and program space needs.

The GNWT refusal to offer a renewal would continue "...until specific direction is determined concerning the future spatial requirements...in the City of Yellowknife."

The Listing

Marceau had considered listing the tower for sale in the late fall 1996. The realtor involved, Ken Pearman, continued to pursue a listing on the building. On February 6, 1997 he faxed Marceau a listing agreement.

At that point the building had been overheld for more than a year. Al and Hazel Marceau had been obliged to sign a personal guarantee as security for the mortgage renewal. After Marceau received the latest Public Works letter he was ready to sell. He signed and returned the listing agreement, putting the Lahm Ridge Tower on the market.

Pearman tried two other potential buyers before he approached Mike Mrdjenovich. The first, after some initial interest, decided not to proceed as they felt the leasing issue could not be cracked. The second never seriously engaged. The third potential buyer approached was Mike Mrdjenovich, who made an offer to purchase for \$4,400,000.00 on May 23, 1997. The offer was intended, in Mr. Mrdjenovich's words, to "get things going".

Finalizing the Options Paper

The development of the Options Paper was continuing, and the Department was holding fast to the position that they would not make commitments during the planning process which led up to the August Cabinet meeting.

In May, 1997 the Government was approached by the Denendeh Development Corporation in conjunction with a developer, who wanted to purchase and lease back a major government owned office building. Ken Lovely instructed (doc 914) that a reply be

prepared stating that “we’re working on a plan to rationalize Yellowknife office space. We’ll take [the] proposal into account.”

In February 1998, referring back to this offer, Lovely states:

“...the only way we will enter into leases or sales is through a competitive process..”

“...All groups have the right to compete for business in the capital and it would not be fair or appropriate for the GNWT to favour one over the other.” (document 926)

Moving into late June, the Yellowknife Office Space Options Paper was being pulled together in its final form. Ken Lovely reviewed the latest draft and tells Vince Dixon in an e-mail of June 23:

The only question in my mind is the amount of space that we’ve reduced.....why have we not reduced by more? It looks to me that we’ll be spending about \$1.4 million more than we need to by Division.Call me to discuss. (document 3168)

The Options Paper was submitted to the Minister, The Honourable Goo Arlooktoo on July 23, 1997. We know this date because Ken Lovely mentioned this fact in his e-mail of July 24, which discusses the limits of the Department’s ability to act pending receipt of a decision on the paper. Lovely stated that he feels comfortable in:

‘... drop[ping] the Searle Building and the first floor of the Go Ga Cho building where leases have already expired. I don’t consider that we’re pre-empting Cabinet on this as this is just good management on our part within our existing authorities. It doesn’t affect major leases or the Government owned office buildings where we’ve requested political direction. (document 3163)

Mr. Lovely admitted that Lahm Ridge Tower was a “major lease”. He attempted to explain away his e-mail by suggesting that it was only the government owned office buildings where they had requested political direction, not the major leases. I understand the distinction he was trying to convey, but I am simply not able to accept it as the true meaning of what he had written..

Appendix “A” attached to the Options Paper set out which leases should be kept and dropped. It stated that the LRT lease should be dropped. Lovely testified (at p. 480) that every draft of Appendix “A” generated by the Department showed the LRT being dropped, except the very last. The very last version bears the date July 30, 1997 - after the paper was submitted to the Minister for signature. Mr. Lovely admitted that someone, (p. 557) and it was probably him, must have pulled the July 23 versions of Appendix A, from the Minister’s Office and substituted the July 30 version, which, for the first time suggests that Lahm Ridge Tower be retained.

Mrdjenovich and Bailey become partners

I stated earlier that on May 23, 1997 Mr. Mrdjenovich had made an offer to Marceau for \$4,400,000 in order to get things going. Marceau made a counter offer on June 9, 1997 and there was an on going dialogue. According to the evidence of Mr. Mrdjenovich he spoke directly to Marceau on the matter but he didn't do too much about the offer. He received some financial statements from prior years' operations to review.

He did talk to some people about financing and they gave him a tentative go ahead - enough to make it worth pursuing. He knew from the beginning that a renewal of the lease was essential (p. 2852). He states that he didn't talk to anyone in government. He is clear that he did not talk to the Premier.

On June 9, 1997 he received a handwritten authorization (document 9069) from Marceau to negotiate the terms of a new lease and a verbal authorization to contact Government. Mr. Mrdjenovich states that he didn't use that authorization. He didn't do anything about the lease for over a month.

At the very end of June or early in July, sometime before the 5th of July, Mr. Mrdjenovich decided to talk to Mr. Bailey about the deal. Mr. Bailey put the date as a bit earlier, towards the end of June. The discussions must have gone well because on July 10 the two had a number company, 974102 NWT Ltd. of which each owned 50%.

Mr. Mrdjenovich states that his reason for bringing in Bailey was because of his need for a local manager. He found Bailey to be capable and honest and he respected his abilities and education. He denies that Bailey gave him access to government he would not otherwise have had, but he states in reply to the question: Did you suggest to or urge Roland Bailey to call or see Ken Lovely?

*" I did not. I don't know Ken Lovely. I didn't know where --- Roland know the system better than I do; he would know who he had to talk to....
...I didn't tell Mr. Roland where to go and what; I thought, he knows where to go to see somebody." (p. 2981)*

Negotiation with Marceau

The new Company was prepared to make an offer for the Lahm Ridge Tower. The price was to be \$4,400,000, the closing date was to be August 29, 1997. The two conditions on the offer were as follows:

- (a) *[subject to] receiving approval of financing on or before July 31, 1997; and*
- (b) *[subject to] receiving a written commitment from the government of the Northwest Territories on or before July 31, 1997, to renew the lease of the premises in the building for a term and on*

conditions satisfactory to us, at our sole discretion, such renewal to be negotiated by us at our sole discretion. (document 7363-65)

This offer was unsigned and was faxed to Mr. Marceau by Mr. Pearman at the same time as Mr. Pearman sent the extremely interesting, but undated "Pearman Memo".

I must say that in this process, I was amazed at how many people in positions of all kinds sent undated correspondence. We can establish that the memo was sent at around the time that Bailey was invited into the deal. It was sent before the reply, which is document 6420 and is dated July 8. It is beyond any doubt sent before July 10, when the second Offer was signed. In any event it was sent after but around the time that Bailey was brought into the deal.

The memo (doc. 7362) states:

"Al: I just got a copy of this offer for your review. It covers the items we spoke about with the exception of the closing date of August 29. Mike wants a quick closing for a couple of reasons 1) even a small interest rate increase by January could impact the bottom line for them 2) they want to get the lease arrangements completed as quickly as possible in case of any changes in GNWT personnel or they change their minds.

Mike has indicated he has received verbal approval for the necessary changes in the lease but could not get it in writing until he has an accepted offer. The same holds true for financing. I would suggest that your lawyer or we hold the deposit for you. I will call shortly and cover the offer with you if you are home. If not I will try in the morning.

THANKS,

Ken

Counsel for Mr. Morin and for Mr. Mrdjenovich would have me disregard this memo as being puffery, verbiage or a misunderstanding. Contrary to the argument and suggestion heard, that the memo might have been a method used by Mr. Pearman to get the matter going during a slow period, it appears to have been written when there was a great deal happening. Negotiations were active. A deal was in process. Why would Mr. Pearman throw a wrench in the works by sending a false memo?

It is also hard to imagine that Mr. Pearman would make up a quote for Mr. Mrdjenovich. As Mr. Pearman knew Mr. Marceau and Mr. Mrdjenovich were speaking directly to each other and a lie was bound to be swiftly found out. If he were caught lying to his clients he could lose the listing, the commission and

possibly his license. And there is no indication that the memo's contents caused any issue between the parties at that time or since.

The language is concrete and clear, the meaning is unambiguous. The memo came in the form which is typically considered to be very good evidence. It is a written record made at the time of the event, without anticipation of legal review and provided to a third party (Marceau) who can authenticate its existence. I am not prepared to simply disregard this memo.

While Mr. Pearman was a most reluctant witness, he did agree that he had not "made up" the memo, and that Mr. Mrdjenovich had indeed made the statements in the memo (p.1000). Mr. Mrdjenovich denies the statements clearly and adamantly.

At this point, Mr. Bailey and Mr. Mrdjenovich still held the very logical view that, with authorization from Mr. Marceau, they should be able to do the negotiations with government for themselves. They asked Mr. Marceau for a second authorization to act for Lahm Ridge Investments Ltd. (document 9059), this one typed by Mr. Pearman's very distinctive typewriter, which mis-strikes on the "Z".

The approach to Lovely

We know that Mr. Bailey approached Mr. Lovely with regard to Lahm Ridge Tower. He did so on July 23 or earlier, but not much earlier.

Mr. Bailey describes the meeting as being very short (p. 2490).

A: ... I explained to him that we were buying the building, we had an agreement in place to buy the building if the lease were to be renewed, and would he negotiate the terms of a lease renewal with us?"

Q: And how did he respond?

A: He was --- I think that my opinion was that he wasn't comfortable talking to me about it. He said that no, he wouldn't. I then asked him if he would negotiate with the current owner. He said that he would have to check into it and get back to me. (p. 2490)

Even with this short description, there are significant differences with the Lovely version (p.595-6).

Mr. Lovely says it was a telephone call. His e-mail of July 23, 1997 says it was a telephone call, but Roland Bailey says it was during a meeting - likely one on the Petroleum Products Division contract (p.2608-2610) Mr. Lovely says clearly he never met Mr. Bailey on matters related to the Petroleum Products Division contract (p. 587).

Mr. Bailey remembers it was a meeting because he was aware that Lovely was not comfortable. He inferred this from Lovely's "body language" (p.2610). I can understand that Lovely might, even at the time of the event, have wanted to avoid linking an item as

controversial as the Petroleum Products contract, with one which could also grow to be controversial, such as another contract with Roland Bailey. It is interesting that even at the earliest record of what happened, we have discrepancies.

Mr. Lovely is clear that he did not know or want to know financial details. He was aware only that Bailey was considering a purchase, (p.596). Mr. Bailey says Mr. Lovely was told there was “an agreement in place to buy” (p. 2490).

Mr. Bailey says that Mr. Lovely told him about the renewal term being 8 years (p. 2491). Mr. Lovely indicates that he cannot recall doing so (p.581).

Mr. Bailey says Mr. Lovely identified Mr. Dixon as the person who would negotiate (p. 2613). Mr. Lovely says he did not (p.596).

In each instance Mr. Bailey’s description makes more sense. Mr. Bailey gives clear details why it was a meeting, not a phone call. Mr. Bailey had to have been told about the 8 year term or he would not have had reason to adjust the purchase price as was done on July 29 when Marceau came to Yellowknife.

Both Mr. Bailey and Mr. Mrdjenovich called Mr. Dixon during this time. Why was everyone calling Mr. Dixon unless Mr. Lovely had identified Mr. Dixon as the contact person?

The actual e-mail dated July 23 from Mr. Lovely to Mike Burns makes the following comment on the Bailey meeting:

[...]
The other high lease costs are in the LRT. It seems to be an older lease entered into at a time when rates were high across the market. This time around we should aim to negotiate new arrangements in line with what we think the market should be charging in all buildings. I had call from Roland Bailey who is considering buying LRT in partnership with Mike Majenovitch (wrong spelling). He will be pushing for long term lease arrangements (10 years). I'm not interested. but wouldn't mind your comments on the state of the building and its desirability or lack of desirability as long term office space. (document 754)

The reply from Mike Burns (doc. 753- 754), who was filling in while Vince Dixon was on holidays, responds in some detail on the LRT and then states:

We be glad to give you more details/history on the YK properties (over lots of coffee) I'm shooting from memory, but Jim Pagonis has a good handle on the history of each lease.

It appears that Lovely made the decision on the Lahm Ridge Tower lease extension without even taking up the offer for coffee.

Based on the Burns memo, his own knowledge from the Yellowknife Office Space Options Paper and an earlier discussion with Joe Handley where that Deputy Minister spoke favorably of the Lahm Ridge space, Lovely makes a decision. He does not know exactly when or what changed his mind. He does not know the day when he resolved to renew the lease. He simply decided to do it sometime between July 25 and July 28.

Mr. Lovely states clearly and unequivocally that he decided, on his own initiative, without political instruction of any kind, from Premier Morin or anyone else to extend the Lahm Ridge lease (p. 552). He did not seek the consent of his Minister, nor did he advise him until just prior to the August 13th Cabinet meeting (p. 551). Minister Arlooktoo thought that Mr. Lovely presented it to him in the last week of September.

He telephoned Bailey before the end of the week of July 23rd to let him know that the government would negotiate a renewal of the LRT lease with the current owner (p.487).

When Dixon returned from holidays on July 28th, Ken Lovely briefed him on Lahm Ridge Tower and told him to contact the current owners to negotiate a renewal (p. 485-6).

The Renewal "Negotiations"

Following on the phone call from Mr. Lovely, Mr. Bailey advised Mr. Mrdjenovich, who spoke to Mr. Marceau and made arrangements for Mr. Marceau to come to Yellowknife to negotiate the renewal. A meeting was held at the Explorer Hotel between Bailey, Mrdjenovich, Pearman and Marceau, probably on July 29, 1998.

At this meeting the buyers advised Marceau that the deal would only work if the purchase price was dropped to an even 4 million dollars. The reason for the drop was the shorter lease period. - only 8 years instead of 10. Whether at this meeting or later, eventually the purchase price was dropped, and the offer of July 10, 1997 was amended and initialed. Document 9060 shows the amended version.

One of the changes was to alter the date on the condition for lease renewal from July 31, 1997 to August 1, 1997. At or around this date, Mr. Marceau signed a trust declaration stating that he was negotiating the renewal in trust for 974102 NWT Ltd.(doc. 9057). This meant that any renewal received was to be for the benefit of 974102NWT Ltd. and not for Mr. Marceau. It also meant that refusing an extension on the deal on September 30th, at the last minute, when the lawyers asked for extra time to close, would have been difficult and potentially resulted in legal disputes.

Following his meeting with the purchasers Mr. Marceau called up Mr. Dixon and made an appointment to see him on July 31 - the next day. Mr.Dixon had already received instructions from Mr. Lovely and had obtained some advice from Jim Pagonis by e-mail (doc 752). For some reason he didn't get the information about the parking and the basement rent reductions. For some reason he decided to negotiate the renewal personally, without anyone else participating. This was the only lease he negotiated in

that fashion during his time in his current position. (p. 835). No reason was given for this decision.

Mr. Dixon says he never called Mr. Marceau, but Mr. Marceau called him. Mr. Marceau did this at Mr. Mrdjenovich's suggestion (p.876). Mr. Dixon testified, without any indication of irony, that it was "coincidental" that Mr. Marceau called that day, after having not communicated since February. (p.676)

This explanation by Mr. Dixon overlooks the fact, which Dixon very reluctantly disclosed (p.679), that Dixon had been talking the day before to Mr. Mrdjenovich, and earlier to Bailey about the Lahm Ridge Tower. These included discussions on the lease renewal, particularly its term.

The calls between Mr. Bailey and Mr. Lovely resulted in a much greater flow of information than Lovely remembered or was prepared to admit. I also take it that the calls between Bailey and Dixon and between Mr. Mrdjenovich and Dixon resulted in a considerable exchange of information. I would venture that, as long-time acquaintances in the area of property management, (Mr. Dixon had even worked briefly for Mr. Mrdjenovich back in the 1980's) Mr. Dixon and Mr. Mrdjenovich, deliberately or simply incidentally to their talk, worked out the terms of the renewal during their conversation of July 30, 1997.

This is a logical explanation as to why Mr. Marceau is so adamant that he never negotiated the terms of the renewal (p.879, 883). He didn't. Marceau was an older witness and his memory clearly failed him on some details but not on this point. He was honest about when he was confident and when he was less clear. I accept his testimony that he did not negotiate the lease.

On July 31, Dixon and Marceau meet for about 1 hour at Dixon's office. On August 1, 1997 at close to 5:00 p.m. Mr. Dixon went to the Nova Construction offices to finalize the deal. For some reason the Department had insisted on dealing with Marceau directly, even though Lahm Ridge Investments could legally have appointed any agent they chose for this deal. Any one of the buyers could have negotiated on their behalf. Instead, in order to satisfy what DPW thought were appearances, an old gentleman of 73 was obliged to travel to Yellowknife to enter into irrelevant negotiations. This did not satisfy appearances, it simply caused more confusion and suspicion.

There is no memo of the July 31 meeting and Dixon says that he kept no notes. The next day Dixon wrote a letter (doc. 751) confirming his "negotiations" and setting out the terms to extend the lease. They were:

- 1) *a renewal for the remainder of the term - 8 yrs 2 mo.*
- 2) *a reduction in operating costs of \$60,000 per year*
- 3) *landlord to upgrade the HVAC*
- 4) *a reduction of \$1.00 per sq. foot in the basement*

Mr. Marceau was prepared to accept this and wrote a letter to that effect while he was still at the Nova offices on August 1, using Lahm Ridge Investments letterhead he had brought with him. (document 750)

Mr. Mrdjenovich was present and was not happy with the Dixon letter. He thought the text stating "I will proceed with the lease renewal process accordingly" was too wishy-washy for a lender to rely upon. He wanted more concrete language. He was also not happy about the terms.

On August 6, after the long weekend, Dixon wrote a new letter (doc. 745) which set out three terms to extend the lease. They were:

- 1) *a renewal for the remainder of the term - 8 yrs 2 mo*
- 2) *a reduction in operating costs of \$60,000 per year*
- 3) *landlord to upgrade the HVAC system.*

It also stated that "the GNWT will renew the lease accordingly". The letter was delivered to the Nova Construction offices and sent by fax to Marceau in Kelowna. Marceau signed his acceptance and sent it back.

Whatever else came before, this was clearly an imposition of terms by Mr. Mrdjenovich. He was active and involved in the negotiation process. He had a right to be active and involved in the negotiation process. It is only Dixon and Lovely who felt he shouldn't be there. They continue to insist that Mister Mrdjenovich and Bailey played no part. Their insistence is backed neither by truth or logic.

As Dixon had been instructed to negotiate only with Marceau, his discussions with the new buyers were against orders. This would also explain why Dixon conjured up a negotiating session in his e-mail to Lovely (document 749) of August 5, 1997 where he uses terms such as “when the dust settled:” and “Marceau had proposed” and “the GNWT will not demand’ to describe the discussions. All of these convey the impression that there were hard negotiations. This was also maintained in his testimony where Dixon indicated several topics of contention and stated that the discussions went “back and forth” (p. 682 – 83).

As for Ken Lovely, even his experience with Lahm Ridge Tower does not appear to have changed his mind with regard to leases and renewals. On July 30, 1997, as Vince Dixon is in the process of renewing the lease, Lovely was advising all Deputy Ministers of the effects of the Options Paper:

*“ ...it will be necessary for many departments to move into new space to solve some long standing problems with existing office space, to vacate undesirable buildings where leases are due to expire...
Finally, before we extend any leases where we have extension options, we’ll be taking a hard line with landlords to force them to correct deficiencies and provide better service. (doc. 853)*

Documenting the Deal

The actual renewal document was signed on September 29, 1997 as part of the transfer of title. On September 30, 1997 the renewed lease was transferred to the new owner. These dates and documents are not significant to the negotiation and terms of the transaction. They were simply the later documentation of the agreements made.

There is nothing noteworthy about the financing of this transaction or the order of signing and registration of documents. It is noteworthy that the result of the transaction, without any evaluation of the position of the vendor, was a substantial financial benefit to the new owners. The building was purchased for \$4 million. On the day of the transfer Bailey swore in the land titles documents that the building was worth \$5.8 million. The transaction was financed for \$4.2 million - more than the purchase price. At the end of the 8 year lease term the entire mortgage will be paid off, and the building will be owned free and clear by Mr. Mrdjenovich and Bailey’s company. This was an excellent financial deal for Bailey and Mrdjenovich.

The arguments about tax consequences are interesting but not relevant. Tax is paid on profit. If there is a lot of profit there is a lot of tax. There are ways around the cash flow issues. None of this takes away from the basics of the deal.

Oram and Morgan

The Lahm Ridge Tower story is not complete without dealing with the testimony of Michael Oram and Chris Morgan, two long-term employees of the Department of Public Works in Yellowknife.

Michael Oram states that he learned about the Lahm Ridge Tower renewal in November, 1997. At that time he received copies of the renewal and associated documents from FMBS. The Financial Management Board Secretariat had been sent a copy of an Assignment of Rents as security on the Lahm Ridge Tower property, and asked for an acknowledgement of the assignment. Mr. Oram admits he was "very surprised" upon learning of the renewal.

Counsel for Premier Morin suggests that this is an impossible story. He argues that the "cc." lines on various letters show where copies of documents were sent, and that the only copy of the lease extension was sent to Mr. Vince Dixon.

Simply because it is the only copy shown on the letters which happen to be in evidence, does not mean that a document was never copied or attached in other documentation which is not before me.

I find Mr. Oram's testimony to be perfectly possible and credible on this point. It is disappointing that Mr. Morin's counsel felt it necessary to impugn Mr. Oram and his actions and motives. It would have been possible to argue the value or lack of value of this testimony without attacking the witness.

In any event, Mr. Oram had knowledge of the renewal. In early December 1997 when Vince Dixon was visiting at their offices, Michael Oram and Christopher Morgan went into an office and questioned Vince Dixon on the Lahm Ridge Tower renewal.

Both Mr. Oram and Mr. Morgan are clear and each supports the other's testimony completely as to the time, place and actual words in the conversation which followed. There was no written record made of the discussions. They admit to having compared memories of what they each heard. They say these conversations did not affect their testimony.

Both state that when Mr. Dixon was asked about the circumstance of the Lahm Ridge Tower renewal, Dixon advised that he had been instructed by the "big guy" to renew the lease. When his listeners appeared puzzled, Mr. Dixon is said to have elaborated "You know, Donny". Both Oram and Morgan understood a reference to the Premier.

Premier Morin's counsel tried to shake the witnesses on their memories, their hearing, and on the implication which took the witnesses from "Donny" to Premier Morin. Each held fast to his testimony.

This conversation was put to Vince Dixon. Dixon stated that there was such a meeting, but he does not recall ever having said what is alleged. "At no time did I ever state that I was directed by the ... 'Donny' to extend that lease. To have done so would be inappropriate, irresponsible and false." (p.805)

In assessing this testimony I have no problem concluding, as the witnesses did, that a reference to Donny would have been a reference, in that context, to the Premier. It is a matter of common knowledge that the Premier is called Donny. Government – enforced holidays for public servants have been tagged “Donny days”, after Mr. Morin. On the transcript of this hearing Chief Balsillie calls the Premier Donny, as did other witnesses from “south of the lake”. The reference to Donny would not be mistakable.

I find as a fact that Mr. Dixon did say what Oram and Morgan testified he had said.

This does not, of course, make the statement true. Mr. Dixon could have known something. Mr. Dixon could have been speculating as many others have, before and since. Mr. Dixon could have been lying. Unfortunately, Mr. Dixon has offered us no explanation, which against leads to more speculation and conjecture.

Mr. Oram and Morgan reported to their conversation to their supervisor who testifies she vaguely remembers something of that nature (p.1380). Nothing was passed along.

It would likely be worthwhile for the Department of Public Works to develop a policy and procedure to guide public servants under these circumstances. There appear to have been several occasions during this Inquiry when significant issues were raised and summarily dismissed within that Department.

Oram and Morgan have little to gain by their testimony and a great deal to lose. Counsel for Premier Morin has chosen to attack, accusing one of being a laggard and a scoundrel. If their employer takes an equally personal approach, they may be subject to general, if unstated disapproval or unstated scrutiny. They are both honest men and responded honestly when required to testify. They should be commended for doing their duty when others might shirk.

The Government Response

When the Lahm Ridge Tower transaction became controversial, the government was called to respond. There were two consistent responses by Mr. Lovely to any attack on the Lahm Ridge Tower renewal. His first response was that Lahm Ridge was a good deal for the GNWT. It is not the mandate of this Inquiry to make decisions on reach conclusions on matters of policy. The evidence in front of the Inquiry regarding the renewal terms is summarized in Appendix “E” to this report.

Mr. Lovely’s second response has been that the decision was within his authority as Deputy Minister. This was argued by Mr. Voytilla beginning at p.2058 of the transcript. He refers to document 11860, the Policy on Leasing of Improved Real Property, which states, “[t]he need for a lease renewal must be confirmed by the Minister responsible.” At p. 2063 Mr. Voytilla suggests “You may have to simply trust me”. The discussion continues through to p. 2069, where he deals with the issue of new leases rather than renewals.

The topic is taken up at p. 2101-9, and remains unresolved. As was stated repeatedly in the Inquiry, the relevant Ministers depend heavily on their deputies to provide prompt and accurate information. This information assists the Minister in his decisions and other Members through statements, questions and replies.

Misleading Briefing Notes

There were a series of briefing notes and ministerial answers prepared in relation to Lahm Ridge Tower. On reviewing the notes and answers, I have reached the conclusion that several of them were substantially misleading in the account of events surrounding the lease of Lahm Ridge Tower presented. A summary of their shortcomings is set out below.

Briefing Note for all MLA's over the signature of Jim Antoine, Minister of Public Works dated February 4, 1998: (doc. 3606-3609)

- suggested that the decision to extend the Lahm Ridge Tower lease followed (and was the result of) the completion of the office space plan for the GNWT by emphasizing Deputy agreement (a preliminary step) rather than Cabinet approval;
- suggested that Mr. Marceau, as owner of Lahm Ridge Tower, contacted the Regional Superintendant of his own initiative as late as July 29, 1997 to negotiate the lease, and that the decision to negotiate by DPW followed that contact;
- suggested that the goal of those July negotiations was to 'win' concessions to which Mr. Marceau had agreed in February;
- did not mention the involvement of Mr. Mrdjenovich or Mr. Bailey; did not mention correspondence while the lease was overhanging, and did not mention that Lahm Ridge Tower had at any time been on the appendix of leases to be discontinued; and,
- without providing any information, repeats and relies on the assurance of Mr. Lovely that the decision to extend the lease was a business decision and was in the best interests of the Government of the Northwest Territories.

July 28 Briefing Note "Leasing - Lahm Ridge Tower" (doc. 3610-13)

- Suggested that Mr. Marceau had approached the Department in July, 1997 about renewing the lease without reference to earlier discussions;
- Suggests that the DPW was induced to negotiate by the potential of substantial cost savings - of which there were none relative to the February letters; and,
- Provides a detailed chronology of events that shows no developments between January 1997 and July 1997, and again, does not mention either Mr. Bailey or Mr. Mrdjenovich by name.

Reply to Oral Question asked to Mr. Ootes on February 6, 11, and 12, 1998 by Minister Jim Antoine:

- States, which is clearly not true, "Departmental officials were not engaged in negotiations about the lease extension or about the Lahm Ridge Tower, prior to

August 3, 1997, with individuals outside the department other than the owner, Mr. Marceau.”

Briefing note for all MLA's from Ken Lovely, dated November 13, 1997 (doc. 7919, 7921)

- Suggests that Marceau approached DPW in July 1997, and that there were lengthy negotiations leading to the signing of the lease.

Reply to Oral Question by Minister Antoince, February 4, 1998 (document 7951).

- States, untruthfully, that “Negotiations on the lease extension took place exclusively between Vince Dixon and Al Marceau, in the Superintendent’s office, supplemented by a few phone calls between the two. Neither Mr. Mrdjenovich or Mr. Bailey were involved in the negotiations.

Not every briefing note or prepared answer for the legislature was untrue or misleading, but the list identified above is more than sufficient to make out a case for the conclusion that there was a serious *pattern* of misleading information put before the House, to the Minister and to the Premier as well.

What however are the conclusions that we should draw from these notes and statements before the house?

Ken Lovely acknowledged that when the Honourable James Antoine was appointed in early December to the Public Works portfolio, he briefed the Minister. Minister Antoine would not have known very much about Lahm Ridge Tower before being briefed by him. (p. 534). Minister Antoine says that the prepared answer provided by the Department is all the information he was provided with (p.2241). Though Lovely appeared to avoid responsibility for specific briefing notes containing inaccuracies or misstatements -- stating he had been away at the time, had only read them after the fact, or had verbally corrected false statements -- Mr. Lovely denied that he was trying to shirk from them.

I find Mr. Lovely’s wavering on this point inconsistent and unbelievable. It was his job to get the facts right when there are questions about a matter in the house. Particularly with respect to such a high-profile matter where his own conduct was under question, the onus on him to provide full and accurate information was considerable. His failure to ensure that the information was correct appears to be inconsistent with his generally high professional reputation. Perpetuating misinformation about the Lahm Ridge Tower transaction as late as February, 1998 is consistent with trying to maintain secrecy or deflect attention.

Internal inquiries

There is evidence that Members of the Executive had taken steps to find out about the renewal. In November 1997 – there were three different inquiries. Jeff Gilmour, then

Secretary to Cabinet, asked Ken Lovely to explain his authority to extend the lease. Mr. Lovely's response is document 1119.

Finance Minister John Todd called Ken Lovely and Lew Voytilla, Comptroller General, to a meeting to find out if proper procedures and policies had been followed in extending the lease. Evidently he was satisfied with the response. (p. 2130).

Premier Morin asked for and received a briefing note on the subject. After the issue continued to be in the public eye, he called a meeting with Ken Lovely, the Honourable James Antoine, newly appointed as Minister of Public Works, his new Secretary to Cabinet, Andrew Gamble and Donald M. Cooper Q.C., Deputy Minister of Justice. Mr. Cooper was to attend in order to ask questions. (p.3277).

Premier Morin had a limited memory of the specifics of that meeting. Asked what Mr. Lovely had said, he replied (p. 3278):

I can't totally recall. He just answered the questions. He was very convincing, that it was value for money, it was the right thing to do. They followed the procedures, and I said fine, then I would defend them.

It is not entirely clear why none of these inquiries elicited any of the serious questions about the transaction of the nature that have been raised in this Inquiry.

Reasoning

No-one anticipated, or could reasonably be asked to anticipate all the lies, half truths and rumours generated in this transaction.

What was clear right from the beginning was that the transaction was controversial, complex and involved Premier Morin's controversial landlord, Mr. Mrdjenovich, and his friend and former Secretary to Cabinet, Mr. Bailey.

It reached into his office, with the complicating involvement of Ms. Babiuk as his Principal Secretary. It dealt with an asset and a transaction worth several million dollars.

The Lahm Ridge Tower issue appears to defy resolution. There is one main question – was there political direction given? This is so riddled with contradiction it is followed by subsidiary questions – if so, who gave that direction? Could it have been Premier Morin? Simple possibility is unsatisfactory. In making a decision in this process, not only must an allegation be shown true on the civil standard – the balance of probabilities – it must go further and meet the test established by Commissioner Hughes in *De Jong*. As the finder of fact, I must be *quite satisfied*.

Political Interference

Taking the first question: Was there political direction given? I am obliged to weigh the following:

In favour:

The following unexplained or unusual occurrences:

1. The long term policy of the Department was so quickly and easily reversed in an instance when the people involved were known to the Premier;
2. That Ken Lovely would act on this matter without seeking to talk to his Minister, when no urgency has been shown and an Option Paper on this very subject was pending before Cabinet;
3. That all drafts of the Options Paper except the very last shown the Lahm Ridge Tower building being dropped;
4. From the first moment the recollections and writings of Ken Lovely appear uncharacteristically unreliable;
5. The Pearman memo which clearly and contemporaneously says that Mike Mrdjenovich was dealing with an insider at about the time that the decision was made combined with the access Mrdjenovich clearly had to Morin, although he rarely used that access;
6. The statement by Vince Dixon, who negotiated the renewal, when he stated that "the big guy" meaning "Donny", meaning Premier Morin, had told him to renew the lease;
7. The Lahm Ridge Tower file at the Department of Public Works which was complete and well annotated regarding the original lease and which was almost bare regarding the renewal;
8. The decision of Ken Lovely to wait until Vince Dixon returned to renew, the insistence of Dixon and Lovely, against any factual basis, that Bailey and Mrdjenovich had not participated in negotiations, the decision of Vince Dixon to negotiate alone and his failure to make notes of the negotiations;
9. The uncharacteristic lack of frankness in the briefing notes prepared by or under the direction of Ken Lovely;
10. The insistence that Al Marceau come to Yellowknife to negotiate, when the corporation could have appointed any agent;
11. The fact that Al Marceau was not required to negotiate, as the deal appeared to him to have already been made;

12. The discrepancies between Ken Lovely and Roland Bailey as to what was conveyed during their discussions;
13. The decision by Mrdjenovich to include Bailey as a local manager in such a profitable transaction when Nova Construction (1994) was already operating as a property management company;
14. Why the renewal was kept so secret by all involved;
15. The failure of anyone in government to ask for documentation demonstrating that this was a good deal;
16. The last minute change in the Offer to Purchase of one day from July 31 to August 1, as if in the knowledge that the negotiations would be completed;

Against:

1. The sworn testimony of Lovely, Morin, Dixon, Mrdjenovich, all of whom clearly and forcefully denied any political involvement by Premier Morin or any one else.
 - The evidence of Lovely and Dixon has not proven reliable on other issues. Both were tense witnesses, Lovely took exceptionally long pauses before responding to questions, Dixon was agitated.
 - The evidence of Mr. Mrdjenovich has been largely true and accurate.
 - The evidence of Mr. Morin has been assessed throughout this report on any occasion when it was required. As an experienced politician, I put very little emphasis on his demeanor as a witness, which was, as one would expect from an accomplished politician of his experience, confident and controlled.
2. The shortage of any positive evidence of any interference.

Involvement of Premier Morin

Responding to the second question: Could it have been Premier Morin? I must consider:

In favour:

- there is evidence of an insider – the Pearman memo;
- there is evidence pointing to Morin – the statement by Vince Dixon;
- there is evidence of Mrdjenovich having access to Premier Morin on occasion

Against:

there is no positive evidence of any contact at that time between Morin and Mrdjenovich and no evidence that there was the contact required to instruct Lovely;

Proceeding to the third level of analysis, the premise that there *could* have been political direction from the Premier must be evaluated. This evaluation is not simply on the balance of probabilities, it requires that I answer the question: Am I quite satisfied that Premier Morin was involved in the Lahm Ridge Tower transaction?

Standard of Proof

Frankly, I am not satisfied. I am puzzled. I am amazed. I am convinced that there are truths out there which were not revealed to the Inquiry. But I am not quite satisfied that Donald Morin instructed that the Lahm Ridge Tower renewal take place and I am **not** prepared to find that as a fact.

The lack of involvement in the actual transaction deals with the most significant issue.

Public Confidence

There is a clearly less significant issue which also arises from this transaction; Did the conduct of Premier Morin meet the standard required? Did he act in a manner to maintain public confidence in his integrity and impartiality?

In this instance Premier Morin's position was compromised by his relationship with Roland Bailey, and by his housing arrangements with Mike Mrdjenovich.

The use of his office to persistently defend a transaction involving individuals with whom he was already in conflict situation resulted in a failure to maintain public confidence in his impartiality.

The Premier *could* have announced, when the Lahm Ridge Tower issue arose:

This issue involves two individuals who are friends and acquaintances of mine. On a personal level, I travel and do business with them. I lease my house from Mr. Mrdjenovich. Roland Bailey shares accommodation with my Principal Secretary whom I respect and rely upon.

For these reasons I have asked Minister "X" to deal with this issue, on my behalf, both in the Assembly and internally in government.

Thank you.

Premier Morin instead chose to take this matter on as a personal fight.

The conflict of interest provisions in the Northwest Territories deal with more than just items of conflict. Section 67 creates additional obligations which require he take active steps to maintain the honour of his office, free from personal interest and advancement. As stated by Commissioner Hughes, when a Member is asked to withdraw from debate or voting, in any arena where constituents are represented must normally be balanced against the personal situation and obligations of the Member.

In this instance, there would have been no significant effect on Premier Morin's ability to serve his constituents. His ability to serve his constituency would remain intact if he were to refrain from the debate. The matter being discussed was largely specific to the private parties and the government agency directly involved. In his role as Premier he could easily have named a person to act on his behalf on that matter, and stepped aside.

Post-employment Relationship with Roland Bailey

Issues

Was it among the public duties of Mr. Morin, as Premier, to enforce the post-employment terms of Roland Bailey's contract as Secretary to Cabinet during the year after his employment in government ended? Was it among his public duties to insure that someone among his Ministers or in his government took reasonable steps to ensure that this and similar post-employment terms were enforced? Were any or all of the Aurora Fund contracts, the Petroleum Products Division contract, and the Lahm Ridge Tower lease extension a breach of the terms of Mr. Bailey's post-employment obligation? Did the Member act in relation to such contracts in a way that would to maintain public confidence in his integrity and impartiality?

Relevant section: s. 67(a)

Did Mr. Morin arrange his private affairs in relation to his personal and social contacts with Mr. Bailey, in a manner which maintained public confidence and trust in his integrity and impartiality?

Relevant section: s. 67(a)

Facts:

Roland Bailey is a life-long Northerner, a Metis, and a member of the T'lingit First Nation. Over the years, he has had significant professional success in the private and public sector.

Bailey's employment history

Mr. Bailey had a successful career in the private sector before he began to work in high level positions with the Government of the Northwest Territories. He was employed with Northwest Tel, an accounting firm in Alberta, and an automobile dealership in British Columbia and one in the NWT. He had worked primarily as a consultant since 1983, for a number of concerns including the Northwest Territories Metis Development Corporation and the Northwest Territories Development Corporation.

In October 1992, he was approached by the then-Minister of Economic Development and Tourism ("EDT") to become Deputy Minister of that Department. He served a three-year term in that capacity, until just after the 1995 election. Premier Morin, upon assuming power after that election, asked Mr. Bailey to take the position of Secretary to Cabinet, and Deputy Minister of the Executive ("Secretary to Cabinet"). Premier Morin chose Mr. Bailey on the basis of the recommendation of the then-Cabinet Secretary and because former Premier Nellie Cournoyea had high regard for his work.

Mr. Bailey agreed to take on the position of Secretary to Cabinet, despite a desire to work in the private sector again, because Mr. Morin had impressed him with his "vision of the

north, what he thought the north should be and where it should go, and I agreed with his thinking and what he was trying to accomplish (p.2641).” Mr. Bailey started in that position on December 11, 1995.

Secretary to Cabinet, it was acknowledged by the Premier (p. 3238), is the highest ranking civil service position in the territory. In his role as Secretary to Cabinet, Mr. Bailey was responsible for supporting both the Premier and the Cabinet. On the administrative side, he coordinated all departments to ensure they were working towards goals set for the GNWT as a whole by Cabinet. In that role, Mr. Bailey regularly attended and participated in Cabinet meetings, and had regular contact with Deputy Ministers from all the departments. He chaired the Senior Managers meetings of all Deputy Ministers. As well, he had a close working relationship with the Premier and the Principal Secretary, who was at that time Don Avison.

Mr. Bailey testified that he was unhappy as Secretary to Cabinet and that it was “the worst job he had ever had”, in significant measure because he was involved in some highly emotional downsizing of long-term public servants. He had a number of interesting opportunities being offered to him in the private sector. He first gave notice to Premier Morin that he wished to leave the position in April, 1996. He had stipulated when he accepted the position that he would be able to leave on ninety (90) days notice; however, by July Premier Morin had not secured a replacement. Ultimately, Mr. Bailey left his position on October 4, 1996, ten months after starting as Secretary to Cabinet after a total of 4 years in the public service.

Relationship with the Premier

Both Premier Morin and Mr. Bailey testified not only that they worked closely with each other on a basis of professional respect but that through their work together they have developed a personal friendship. That friendship lasted after the termination of Mr. Bailey’s employment with the Government of the Northwest Territories. (Morin, p. 3090, 3236, Bailey p. 2412). Mr. Morin testified that he thought he had had Mr. Bailey and Ms. Babiuk over for dinner once (p. 3236) and for drinks a couple of times, and would have a drink with him/them from time to time in downtown Yellowknife, probably on a once a month basis (p. 3349)

In the year after his GNWT employment ended, Mr. Bailey traveled to Asia with Mr. Morin on an Immigrant Investment promotional tour and participated with him in a fishing trip.

Relationship with Ferne Babiuk

Shortly after Mr. Bailey began working for the GNWT as Deputy Minister EDT, he started to share an apartment with Ferne Babiuk. Mr. Bailey and Ms. Babiuk testified that they had known each other for about fifteen years. Ms. Babiuk described Mr. Bailey as her “best friend”. Their relationship is not spousal; they do not share bank accounts.

Ms. Babiuk was Executive Assistant (“EA”) to Don Morin as an MLA from 1991 until his selection as Premier, when she continued as his EA, but in his role of Premier of the Northwest Territories, until May, 1997. At that time she was appointed by the Executive Council to be Principal Secretary to the Premier. As Principal Secretary, her role was to provide political advice to the Premier, and through him to the rest of Cabinet and to manage dealings with other levels of government. Mr. Morin described Ms. Babiuk as his “most trusted political advisor” (p.3240) and a “friend” (p 3236).

When asked whether he and Ms. Babiuk discuss work related matters outside of the work environment, Mr. Bailey testified:

...when I was with Economic Development and Tourism or Department of the Executive, if there were issues that she contacted me for on behalf of the minister or the Premier, then I would deal with her on those issues.

But if the issues did not impact her or any of her roles and responsibilities, we had no discussion of any kind about the business of government. (p. 2418)

It is clear from the evidence that Mr. Morin was aware of the relationship between two of his most senior advisors. However, there is no indication that he took any steps to address any potential conflict or appearance of conflict that might arise from that relationship. In the case of the LRT, once it became apparent that the issue involved Roland Bailey, both Ferne Babiuk and Premier Morin testified that Ms. Babiuk removed herself from any discussions of the issue. However, there was no notification to any other staff in the Premier’s office or other Executive Offices to advise them of the conflict and the need not to involve Ms. Babiuk. The explanation was that it was a small office and nothing formal was required, as it was “common knowledge”. (p. 1969)

The Employment Contract

As a government employee and a Deputy Minister Mr. Bailey’s employment contract was negotiated directly with the Premier. That contract was transferred with Bailey’s switch of Department from EDT to Secretary to Cabinet and Deputy Minister to the Executive. A copy of that contract, dated March 21, 1995 was tendered before the Commission as Exhibit 8B.

The Contract provides that “Premier” means “the person occupying the position of Premier from time to time.” Under “Terms and Conditions of Employment”, the contract provides that “Mr. Bailey agrees to abide by the terms and conditions set out in Government Policy as amended from time to time by the GNWT.”

Among the policies with which Mr. Bailey agreed to abide was the Conflict of Interest - Outside Employment Policy dated August 2, 1993, which was tendered before this Commission as document 11997. That policy defines "Senior Officer" to include Deputy Ministers. It also provides, in part:

...

14. For one year from the date their employment ceases, Senior Officers may not own, operate, control or be employed by any business enterprise within the community in which they were employed and in which they may be in a position to unduly exploit knowledge they gained while employed by the Government of the Northwest Territories.

...

18. An employee who contravenes this policy may apply to the Chairman of the Financial Management Board to be exempted from any or all of the provisions of this section.

Mr. Bailey indicated that he was aware of the policy and considered himself bound by it (p. 2400-2401). He further stated that he had never obtained any waiver exempting himself from the provisions of the policy (p.2402).

Minister John Todd, Minister of Finance and Chairman of the Financial Management Board, testified that he did not know it was his responsibility to enforce the policy, nor did he know what was being done about enforcement. (p. 2167). Premier Morin testifies that he sees no problem with the Post-employment Policy. (p. 3377). He testified that he was aware of the policy and considered that it applied to Mr. Bailey. (p.3325). Premier Morin also testified that he had discussed the post-employment policy with Mr. Bailey in the spring, and had said he would provide a letter to Mr. Bailey in regard to a waiver of the obligations if necessary. Mr. Bailey never asked for such a letter. (p. 3342). The Premier acknowledges that this was not within his mandate to give.

According to Mr. Bailey, there had never been a need for such a letter. He said:

I purposely restricted myself from bidding on any contracts where I had knowledge that I had gained as a civil servant that I could apply and that would be contrary to that restriction, so I never, ever requested the letter (p.2421).

Mr. Bailey also testified that he had discussed termination details with Premier Morin, stating, "I had to do -- discuss those with the Premier, because the Premier was my boss." (p. 2420).

Within the year after the date that Mr. Bailey left his office of Cabinet Secretary, he secured four contracts. In these proceedings, there have been allegations of conflict of interest against the Premier, and, incidentally, of breach by Mr. Bailey of the terms of the post-employment restrictions in his employment contract in relation to all those contracts.

Those contracts were his appointment as Northwest Territories Investment Manager for the Aurora Funds (actually, two funds, with two separate contracts), his successful bid to prepare a Report for the government on Privatization of the Petroleum Products Division of the GNWT, and his purchase of Lahm Ridge Tower.

Aurora Fund and Aurora Fund II

Mr. McGee, counsel for Mr. Bailey, laid out the facts relating to the Aurora Fund and the Aurora Fund II (the "Funds") very clearly in his closing submissions at p.3549 and thereafter. His submissions were adopted by counsel for the Premier in argument (p.3709). Subject to my brief comments, below, I adopt his submissions on this point as generally accurate and complete:

Madam Commissioner, you heard evidence regarding the establishment of those funds as a Government initiative to attract investment capital to the Northwest Territories through immigrant investment made possible under the Federal Government's Canadian Immigrant Investor Program. That initiative was led by the Honourable John Todd, as Minister of Finance, and resulted in the establishment of Canada's Northwest Territories Government Aurora Fund 1996, an independent incorporated society, at arm's length from the Government of the Northwest Territories, albeit a Government-administered venture capital fund, with its membership consisting of persons in designated positions with the Government of the Northwest Territories: the Minister of Finance, the Deputy Minister of Justice, the Comptroller General, and the Deputy Minister of Resources, Wildlife and Economic Development.

In October of 1996, [three days after he formally left the public service] the Aurora Fund 1996 engaged the services of Roland C. Bailey & Associates under contract as its NWT investments manager. That decision was made by the directors of the Aurora Fund 1996 upon the recommendation of Alan Vaughan, who was the individual principally responsible for the development and implementation of the Fund as part of his contract with the Government of the Northwest Territories.

When John Todd learned that Mr. Bailey was leaving his position as Secretary to Cabinet and may therefore be available to undertake the task of serving as NWT investments manager for the Fund, he approached Mr. Bailey regarding that possibility. After confirming Mr. Bailey's availability and interest, Mr. Todd advised Mr. Vaughan of that, and Mr. Vaughan subsequently discussed this with Mr. Bailey.

Mr. Vaughan testified as to the various possibilities and options under consideration, including whether the Fund should engage a single investments manager or divide the function between a Canadian investments manager and an NWT investments manager.

The decision was to go with a separate NWT investments manager who could be someone located in and familiar with the Northwest Territories, and therefore

better able to advise the board regarding capital investments in NWT business ventures.

Mr. Vaughan recommended Mr. Bailey for that role, given his past experience and expertise in the area, and that recommendation was approved by the directors of the Fund.

Although this initiative to establish the Aurora Fund had been approved by Cabinet and Premier Morin was aware of it, he played no role in its actual establishment or in decision-making regarding its structure and operations. Mr. Bailey said it's possible that he may have discussed the possibility of his serving under contract as the Fund's investments manager with Mr. Morin, but it was Mr. Morin's evidence that he had no such discussions with Mr. Bailey and did not know of Mr. Bailey's appointment until after the fact.

Mr. Bailey did not discuss this with Ferne Babiuk, and Ms. Babiuk testified that she was not aware of this until after the contract had been finalized, and she was therefore not in position to have discussed it with Premier Morin.

The Aurora Fund 1996 had to compete for investment with similar funds established by other provinces.

Premier Morin's only direct involvement with the Aurora Fund, which was presented in evidence, thus arose much later, in the spring of 1997, when he, as the Premier of the Northwest Territories, was asked to participate in a promotional tour to Asia to publicize the existence of the Fund and encourage immigrant investment in it and therefore in the Northwest Territories. [Mr. Bailey also went on this trip.]

The Aurora Fund 1996 was successful in attracting subscriptions from immigrant investors, and the extension of the Federal Government deadline for the establishment of such funds presented the opportunity to establish a second such fund. That resulted in the establishment and incorporation of Canada's Northwest Territories Government Aurora Fund 2 on July 1, 1997 with structure and operation parallel to that of the Aurora Fund 1996.

Roland C. Bailey & Associates was contracted to perform the same role with respect to the Aurora Fund 2, although under the slightly different title of NWT investments advisor [June 16, 1997]. This was again a decision of the Fund in which Premier Morin played no role.

The evidence supports the Premier's statement that he played no part in the actual establishment of the Funds or in the decision-making regarding their structure and operations. (p. 3195). I am also prepared to accept his testimony that he had no direct role in Mr. Bailey's appointment.

There appears to be a straight line between Mr. Bailey's employment in the government and his employment as Investment Manager for the Aurora Fund. Mr. Vaughan was a

public servant taking direction from the Minister who recommended Mr. Bailey for the job. It is inconceivable that a person who was Cabinet Secretary and past Deputy Minister for Economic Development and Tourism would not have been very likely to be in a position to unduly exploit knowledge gained in the course of his employment advising about potential capital investment in the Northwest Territories. Mr. Bailey was clearly in breach of his post-contract obligations to refrain or seek a waiver.

Mr. Bailey clearly earned significant revenue through his involvement in the funds, despite his original statement that his revenues from it were "miniscule" (p. 2421). Although commission earnings were relatively low until the end of 1997 (\$13,000), they were likely to increase over time as the value of actual investments increased. Furthermore, he received a monthly fee in addition to commission. It was Mr. Bailey's testimony that his current earnings, while variable because of monthly fluctuations in commissions, were in the neighbourhood of \$3,600 month, less office expenses (p. 2571).

Mr. Bailey and Ms. Babiuk say they had no discussions about Mr. Bailey's appointments to the Fund (p.1956), nor indeed his decision to leave his position of Cabinet Secretary. They do not discuss her work, the politics of the day, individual political figures, his work, his business, his personal finances, her personal finances, his potential contracts or appointments or daily activities (p.1973). While this position may strain credulity, there was absolutely no evidence brought forward to contradict it. I have determined that ultimately, it will not be necessary for my decision that I make a finding on this point.

I do have a problem about the way that the "Hear no evil, see no evil" school of conflict containment appears to have infringed on these people's daily lives. It is not necessary or even preferable that these individuals maintain this wall of silence, unless it is for their own personal reasons. The best protection against conflict, and the method adopted in the NWT legislation and in the Ministerial Policy manual is: full disclosure, notice, and withdrawal.

If the two were informed of the other's activities (not the details necessarily, but the general issues); if they disclose to their employer or client(s) when a conflict arises, advising their workmates to prevent any accidental involvement; and if they stay away from business involving the other, then it will be transparent to all that any conflicts have been appropriately dealt with. This is in contrast to their current system which relies on an implicit, private arrangement with no possible monitor, and with the inevitable resulting stretch of credibility.

The Premier provided a sworn Summary of Evidence, which I accept, that his trip to Asia was paid for by the Executive Council and that he sought approval to transfer the cost of the trip from the budget of the Department of Renewable Resources and Economic Development, on the basis that the purpose of the trip was primarily related to economic development. (See Exhibit 5E).

Report on the Privatization of the Petroleum Products Division

In February 1996, while Mr. Bailey was Secretary to Cabinet, the Executive Council decided that the Petroleum Products Division (“PPD”) should be privatized. In a decision paper dated July 11, 1996 (doc.3728), which was distributed to Mr. Bailey, Executive Council set out their proposed approach to the privatization. By April, 1997 the Department of Public Works was looking for a major report to identify technical, operational and public policy issues associated with the proposed privatization.

To find the appropriate consultant to prepare the report, a Request for Proposals dated April 7, 1997 was advertised in the newspapers. Mr. Bailey obtained the tender documents and submitted a proposal under the name of his company, Roland C. Bailey & Associates on May 7, 1997.

He testified that he may have had some contact with the Division in order to clarify aspects of the RFP, but that he had no contact with the Division after May 2 (p. 2439). He further testified at page 2440 that, in relation to the contract, he had no contact with Premier Morin (confirmed by the Premier at p. 3193), Ferne Babiuk (confirmed by Ms. Babiuk at p. 1957) or Ken Lovely (Lovely said Mr. Bailey may have mentioned his decision to bid at some point, but that there was minimal contact, p. 586).

The Commission heard evidence on the selection process for awarding the contract from Beverly Chamberlin, who was Chair of the Evaluation Committee for the privatization report proposals and Vince Dixon, who was a member of the evaluation committee. Evidence was also received by way of a sworn summary of expected evidence from Brian Austin, director of the Petroleum Products Division of the Department of Public Works. Mr. Austin was not involved in the evaluation process.

Both Ms. Chamberlin and Mr. Dixon testified that the selection process had been the normal one, using standard GNWT criteria (at, respectively, p.1139, 706). Committee members had individually reviewed each proposal received, then the committee had met and reached a consensus about which proposal was best. There was some concern among the committee that Mr. Bailey may have lacked expertise in some areas because of incomplete information about subcontractors. Mr. Austin had shared that concern but was content with the list of subcontractors which was provided. It was the conclusion of the committee, in the words of Ms. Chamberlin:

After we had analyzed all the proposals our recommendation was that Mr. Bailey had provided the best overall proposal, best project team, and provided the best value to the GNWT. (p.1147).

The evaluation committee had sent their report to Deputy Minister Ken Lovely who had accepted their recommendation and instructed them to proceed with the award on May 15. The cost of the contract was just over \$250,000 (doc. 2741).

Premier Morin testified that he had no involvement in awarding the contract (p. 3193) and Mr. Bailey did not know of any involvement by Mr. Morin (p.2440). Their

testimony was confirmed by the evidence that nobody on the committee was contacted, from Ms. Chamberlin (p. 1148) Mr. Dixon (p.706) and Mr. Austin (Exh.8A p.1).

By letter dated May 20, 1997 Mr. Bailey was awarded the contract. He was notified of the award in a phone call from Ms. Chamberlin and by a letter, informing him that he had been awarded the contract over eight other proponents.

Mr. Austin's testimony was that he was not troubled by the fact that Mr. Bailey had a prior association with the government. None of the notations on the individual or group scoring sheets from the committee (docs. 2800-33, and 2732-8 and 2809) reflected any evaluation of or concern for Mr. Bailey's recent employment with the government. Mr. Lovely was aware that Mr. Bailey had bid for and been awarded the contract (p.586-7) and that he had been recently employed as a Senior Officer. There is no indication that any individual involved in awarding the contract took any steps to determine whether Mr. Bailey was entitled to bid for or be awarded the privatization contract in light of post-employment restrictions.

According to Mr. Bailey, "there was no knowledge he gained as a Government employee in doing my contract on privatization" (p.2445). In cross examination, Mr. Davidson cast serious doubt on that position (p.2633 and following):

- Q: And in the course of your work as the Deputy Minister of Economic Development and Tourism, you would have had an opportunity to speak with many in the Department of Economic Development and Tourism about the privatization of PPD?*
- A: I wouldn't say that. It was an issue.*
- Q: All right.*
- A: I talked to many. I couldn't say that. I don't know.*
- Q: Did you talk to any?*
- A: Yes.*
- Q: And did you talk to the minister about that?*
- A: Yes, I believe so.*
- Q: All right. And would you have talked to other deputy ministers about that subject?*
- A: I believe so.*
- Q: And that's a matter that would have been addressed at the Executive -- I'm sorry -- at the senior manager's level?*
- A: Yes.*
- Q: And the issue of the privatization of PPD would have been discussed at the senior managers meetings when you were Secretary to Cabinet?*
- A: That's correct.*
- Q: And you, at that point, would have had an opportunity to receive the views of other deputy ministers on the subject?*
- A: That's correct.*
- Q: And you would have had an opportunity to receive the views of other ministers of the Crown (sic) on the subject?*
- A: I can't -- yes.*
- Q: And you participated in debates with respect to the privatization of Petroleum Products Division taking place within the Government of the Northwest Territories?*
- A: That's correct.*
- Q: And you came to understand the position of the deputy ministers and the ministers in connection with that issue?*
- A: That's correct.*

On the basis of Mr. Bailey's testimony on this point, I find that there is an inevitable conclusion that Mr. Bailey had gained knowledge relevant to the petroleum contract while he was a government employee and that use of that knowledge would and did provide a significant advantage in bidding for or performing a contract in respect to the privatization of the PPD.

Lahm Ridge Tower

A detailed account of Mr. Bailey's personal role in the Lahm Ridge Tower lease extension can be found under the heading "Lahm Ridge Tower".

In this context, those facts support an additional conclusion. The prohibition on ownership of a business enterprise where a former employee may be in a position to

unduly exploit knowledge gained while employed by the GNWT applies to this situation. The working relationship with Lovely, the access to Dixon, a knowledge of the earlier Yellowknife Lease Review, even a knowledge of relevant budgets; all these came to Bailey through his government service.

The web of circumstance surrounding the lease of Lahm Ridge Tower is an example of precisely the type of conflict-ridden situation that a government adopting post-employment policies for senior officers is trying to avert. The lease extension with the Government of the Northwest Territories was a violation of Mr. Bailey's contractual post-employment obligations.

Reasoning:

Bailey's Obligations:

As I have concluded above, each of the Aurora Fund contracts, the Petroleum Products Development Contract and the Lahm Ridge renewal was a violation of the post-employment terms of Mr. Bailey's employment contract. In each case, I reject any submissions that Mr. Bailey did not have *undue* knowledge: his knowledge had potential strategic significance that is contemplated by the prohibition on against being in a position where such knowledge *may* be unduly exploited.

Mr. Bailey did not claim that he received a waiver of his post-employment obligations, nor did the Premier in his testimony suggest that any such waiver had been obtained. The submission of counsel for the Premier that there was an "implicit waiver" of any obligations, at least with respect to the Aurora Funds, because the Minister of Finance was a Director with Mr. Bailey is without basis and irrelevant to the question of the Premier's responsibilities.

However, this is not an inquiry into Mr. Bailey's obligations. That is only relevant to this proceeding insofar as it relates to the Premier and his obligations under the Conflict of Interest part of the legislation.

The Premier's duty to enforce:

It has been made abundantly clear in the course of this Inquiry that no steps were taken by the government in order to enforce Mr. Bailey's post-employment obligations. I do not have more information: I do not know whether such obligations are enforced against some former senior officials and not against others. A failure of enforcement creates a perception problem for the government.

The Premier as representative of the Government of the Northwest Territories signs the employment contracts of all Deputy Ministers. He is also the head of the government in which they are employed, and in that sense, he is ultimately responsible for everything done by the government of the Northwest Territories. However, the Conflict of Interest scheme in the *Act* is not intended to be a vehicle to enforce conventions of Ministerial responsibility and political accountability.

Nor is this Inquiry directed at broad questions of policy, such as the design of an adequate and enforceable set of post-employment provisions for Senior Officers. The appropriateness of the provisions, as they are, has been determined by the political process.

It is clear that responsibility for enforcing the post-employment provisions of the contract has been properly delegated to a person other than the Premier. The policy referenced in the contract which the Premier and Deputy Minister signs clearly points to responsibility for this issue falling on the Financial Management Board. If the policy requires change, there is a process for changing it. If selective enforcement of the policy creates a problem for government, it is to the Minister responsible that those who seek accountability should look. The Premier is not that person and is entitled to delegate responsibility as was done here.

Public Duties and Private Affairs

Meeting the standard of public confidence

It is important to be clear that legislation regulating conflict of interest does not dictate the people with whom a Member can be friends. It does not define acceptable relationships for senior staff. However, a Member is required to exercise care with respect to potential conflicts in conduct of these arising from these relationships.

Premier Morin should have been aware of and cautious about the appearance of potential favouritism where his government was taking no steps to enforce Mr. Bailey's post-employment obligations and because of his extensive contracting with the government. In those circumstances, the Premier's public socializing with Mr. Bailey, and their travel together, creates an appearance of potential favouritism and partiality. Taking all these factors into account, a reasonable person would be likely to perceive Mr. Bailey as 'the ultimate insider'; a man who could get around government and who could make government work for him. Premier Morin contributed to this perception and by so doing contributes to the erosion of public confidence in the impartiality and integrity of government.

The perception problem is particularly acute in this case because of the close connection between Principal Secretary Babiuk and Mr. Bailey. Where the Premier's "most senior" political advisor is the apartment mate and good friend of a man who has significant business dealings with the government, one would expect clear guidelines about identifying and dealing with potential conflicts. No such guidelines were arranged.

The Premier testified that he relied on Ms. Babiuk's professionalism and ability to maintain relationships which did not interfere with her responsibilities to him. (p.3267) He may well be justified in his confidence in Ms. Babiuk -- she did not deal with the Lahm Ridge Tower matter because of her relationship with Mr. Bailey, for example -- but it is reasonable to expect a higher degree of transparency within the Premier's office. There is a clear appearance of conflict that must be addressed.

Under the *Act*, counsel agreed that it is important to look at issues from the perspective of the reasonable person. It is my conclusion that a reasonable person has a basis for doubting the impartiality of the Premier based on the way he has performed his public duties and arranged his private affairs in several aspects of his relationship with Roland Bailey.

All these factors taken together amount to a serious perception problem, for which the Premier is personally responsible. In failing to deal with that problem, he has not arranged his affairs in a manner to maintain public confidence.

Other Issues:

The final term of reference for this public inquiry contemplates that I will inquire into “such further and other matters as may be relevant and arise from the investigation of the foregoing.” Three such issues arose in the course of this inquiry. Two were raised as a result of the testimony of witnesses, one as a result of the documentation submitted by the Premier in his supplementary filing and in the 81(2) process.

The Request for a Visa

Issue:

Was Premier Morin’s support for Milan Mrdjenovich’s relative’s application for a visitors’ visa a breach of his duty not to use his office to influence a decision made by another person to further private interest?

Relevant section: 68(2)

Facts

Mr. Mrdjenovich volunteered this issue in his testimony in cross-examination (p.2923-4). He said he had asked one favour from Premier Morin “on the private end”. About a month after Mr. Mrdjenovich’s brother was killed in November of 1996, his widowed sister-in-law, living in Canada, was going through a rough time. The Mrdjenovichs wanted her to have immediate family around her during that time, but were having trouble getting a visa from the federal government for her brother to come to Canada. Mrs. Mrdjenovich had not been able to get a helpful response from any federal ministers.

Mr. Mrdjenovich asked the Premier, as well as Ethel Blondin-Andrew, his federal MP, to make a phone call to Ottawa on their behalf, and to put them in touch with the right people. According to Mr. Mrdjenovich, the Premier did so. Within a week, his relative had the needed visa. He stayed for two months.

Premier Morin acknowledged that his office made a phone call for the Mrdjenovich family. He said he was helping out in the same way as he would for other NWT residents in difficult circumstances. (p.3079).

Reasoning

It is possible that there was a breach of section 68 in this case, since, as discussed above, Mr. Mrdjenovich was building a house for the Morins which constituted a benefit to them. In light of that benefit, any use of his office by Premier Morin to influence “another person” would need to be viewed with the closest scrutiny.

Technically, perhaps, the section has been violated, since the section does not specify that influence seeking be restricted to the government to which the Member is elected. Premier Morin does not have decision-making power in the federal Department of Immigration, but he may have used his office to help the Mrdjenovich family get access to a visa. According to Mr. Mrdjenovich, the intervention of Premier Morin or Ms. Blondin-Andrew may have influenced the process, he is not sure which, or indeed if either was the deciding factor.

However, this is clearly a case where the saving provisions in s.83(1)(a)(ii) apply. After conducting the brief inquiry disclosed by these facts, I do not hesitate to advise the Legislature that in this case any contravention of the *Act*, is trivial and in good faith.

I accept the Premier's testimony that he was just helping out on a compassionate basis. I accept and expect that he would do the same for a constituent who brought to him a similar problem. Even in light of the significant conflict issues canvassed above with respect to the Premier's relation to Mr. Mrdjenovich, I am convinced the favour requested and performed in the circumstances described will have no negative effect on public confidence in government.

The Fishing Trip

Issue:

Did Premier Morin's fishing trip with Roland Bailey in the spring of 1997 constitute acceptance of a benefit? Was it connected, directly or indirectly, with the performance of duties of office? Could it erode public confidence and trust in the integrity, objectivity or impartiality of the member?

Section 67(b); Section 76(1)

Facts:

During the inquiry, the Commission learned that Premier Morin and Roland Bailey had taken a fishing trip together to Plummerville Lodge in spring of 1997.

The fishing trip first came to the Commission's attention during the direct examination of Mr. Bailey. When asked what contact he had with Premier Morin since ceasing to work as Cabinet Secretary, Mr. Bailey said they had seen each other socially, they had gone to Asia for the Aurora Funds, and they had gone fishing once. (p. 2435). On cross-examination, the fishing trip came up again, and Mr. Bailey denied having discussed any real estate matters -- particularly the Lahm Ridge Tower Lease -- with Mr. Morin during the course of that trip. He also denied any thought that such a trip would advance his position (p.2586).

The fishing trip was put to Premier Morin during his time on the stand. His lawyer elicited more information about the trip: Plummerville Lodge is at Tslinni Narrows on Great

Slave Lake, the trip was overnight, he and Mr. Bailey had fished in separate boats. Premier Morin was asked by his lawyer, and answered as follows (p.3091-2):

Q: Did you have any discussions on that trip with Roland Bailey about any of his business matters?

A: No.

Q: Or any other involvement?

A: No.

Q: What sort of conversations do you have when you are fishing? What is the nature of fishing talk?

A: The nature of fishing talk?

Q: Yeah, what do you talk about when you are out fishing with anybody?

A: Talk about fishing.

I concluded from this testimony that the primary purpose of the trip was fishing. In cross examination Mr. Morin said that his purpose in taking the trip was to talk to Mr. Plummer. The elders in Lutselk'e had raised a concern about a graveyard that was at the end of Mr. Plummer's runway, that the runway might be over some graves. With respect to Mr. Bailey, though, the Premier maintained that they had not talked business on the trip. He denied talking about business, about Yellowknife, about public policy, or real estate. He remembered talking about Mr. Bailey's kids. (p. 3287-8).

In cross-examination it also came out that Premier Morin did not know who had paid for the fishing trip (p. 3288). He promised then and in response to my questions on the point, later in the day, to find out who paid for the trip (p.3352).

Premier Morin was the last witness, so his counsel provided a sworn summary of expected evidence (Exh. 5E) the next day when the inquiry resumed, which was the first of two days of closing submissions by counsel for all the parties. Premier Morin's summary was admitted as soon as it was fully prepared, but after the close of argument by Commission Counsel. With respect to the fishing trip, the complete text of that statement is as follows:

With respect to the excursion to Plummer's Lodge, Premier Morin has reviewed his records and determined that he did not pay for the flight. Premier Morin's understanding is that Roland Bailey also did not pay any money toward the flight. Premier Morin understands that Roland Bailey provides business consulting services to Buffalo Airways. The flight, to the knowledge of the Premier, was either paid for by Plummer's lodge or by Buffalo Airways. The primary purpose of the Member's trip was to investigate concerns about an airstrip being constructed over a grave site.

Mr. McGee, counsel for Mr. Bailey, attempted to answer several questions from me as to whether this was a gift to the Premier from his client. He suggested that Premier Morin had perhaps just tagged along on a flight Mr. Bailey had already booked for himself. Mr. McGee undertook to provide me with sworn evidence from his client by the next morning

to avoid too much speculation about what his client might or might not have done. Mr. Bailey's summary of expected evidence (Exh. 5F) reads, in its entirety, as follows:

With respect to the visit to Plummer's Lodge in the spring of 1997, Roland Bailey did not pay for the flight. Chummy Plummer and "Buffalo Joe" McBryan are friends of Mr. Bailey's. Mr. Plummer invited Mr. Bailey to visit him at Plummer's Lodge before it opened for the season, as he had done on previous occasions. He mentioned this to Premier Morin. Premier Morin told him that his constituents were concerned that the airstrip at the Lodge had been built over a grave site, and that he would like to visit the site and discuss that with Mr. Plummer. Mr. Bailey phoned Mr. Plummer to see if he could bring Premier Morin out with him. Mr. Plummer agreed. The flight was provided by Buffalo Airways. They flew out to the Lodge on either Friday evening or Saturday morning and returned on Sunday. During their stay Mr. Morin examined the grave site with Mr. Plummer, and Mr. Plummer took Mr. Morin and Mr. Bailey out fishing along with Mr. Plummer's wife, the Manager of the Lodge, and other Lodge staff.

Mr. McGee declined to make any submissions on that statement. Mr. Hustwick, counsel for the Premier, was the only counsel who had not yet provided his closing submissions. He addressed the two statements in his arguments.

Reasoning

It is very unfortunate that the evidence presented in the two sworn statements was introduced so late in the process. The evidence we do have poses real questions which may have had an impact on some of the other issues being inquired into had there been an opportunity to test them in cross examination. In the absence of that testing, and the full efforts of all counsel to establish or refute any possible connections arising from that evidence, there are real limits to the conclusions that may be drawn from this evidence.

However, the issue did arise and does disclose a clear breach of the conflict of interest legislation.

As a matter of convenience I will reproduce here s.67(b) of the *Legislative Assembly and Executive Council Act, supra*.

Each member shall:

...

(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.

The evidence shows air travel, accommodations and fishing arranged at no cost to the Premier. They were arranged by a man who is a former high level employee and who now has a significant and ongoing business relationship with the government of Premier Morin. The facts disclosed fall within the category of gift or benefit.

I have said earlier in this decision that the *Act* does not apply only to financial or monetary benefits, relying on the authority of *Blencoe*. That was a case where the Minister was found to have breached British Columbia's conflict rules, where the benefit received by the Minister was public campaign assistance. In this case it makes no difference whether Mr. Bailey paid for the Premier's trip, or merely arranged it. Either way, a benefit was provided to the Premier.

Submissions from both the Premier's counsel and Mr. Bailey's counsel, suggest that the trip was not a benefit to Premier Morin, or that, if it was a benefit, it was trivial.

There are two bases on which counsel argued that the trip was not a benefit. The first is that Premier Morin went on the trip primarily to deal with the concern of the elders of Lutselk'e about a runway over a gravesite. The second is that it is regular practice in the Northwest Territories for a person to "tag along" on another person's charter; that the Premier's action in going on this trip was in fact a cost savings to the Government.

In considering all the evidence, I reject the contention of Premier Morin and Mr. Bailey that the main purpose for the Premier to take the trip was concern about the grave site and the runway. I am certain that both his and his constituents' concern about the grave site was genuine. I do not doubt that Premier Morin discussed the issue with Mr. Plummer. In the evidence before this Commission, however, there was no mention that the trip was anything but social until very far along in the evidence, and only after repeated protestations that there had been nothing but "fish talk" between Mr. Bailey and Premier Morin. The graveyard appears on the evidence to have provided a convenient business tie-in for a personal trip, and I do not accept that it detracts from the nature of the trip as a gift or benefit to Premier Morin, from or arranged by Mr. Bailey.

Counsel submitted, and it is true, that there is a practice in the Territories that a person may tag along on a charter flight, if it is booked and the person paying for it is agreeable. It is also true that when this happens it is seen as a favour, and the recipient is grateful to the provider.

Further, the Premier, as an MLA is held to higher obligations in respect of conflict of interest than ordinary citizens with respect to accepting favours and in particular, favours from those people, like Mr. Bailey, doing business with government.

For the same reason, I cannot accept that the trip was a trivial matter. It is something that a reasonable person would consider a benefit. Perhaps equally significantly, the conflicts legislation is intended to hold Members to a high standard of conduct to help assure public confidence in the integrity of government. There is no element of inadvertance, oversight, or bad judgment under pressure in the decision to go on this trip. The Premier heard of the trip and asked to go.

It may be possible to argue that, due to the issue of the graves, the trip was merely an incidental to the normal obligations attached to Premier Morin's duties of office as an MLA (s. 76(2)). I would have been prepared to find this if the Premier had declared the travel as a gift and identified the reason for it in constituency terms.

The value of such a trip exceeds the \$400 limit set by the legislature. We have not been told of any disclosure statement as required by s. 76(5) of the *Act*.

If the trip had been arranged by or through someone who was not a significant contractor with the government, I might also have been prepared to find that the problem was minor. It is the combination of value, non-declaration and business relationship which causes this problem.

Even without the information from Mr. Bailey, I am concerned, from a conflict of interest perspective, that Premier Morin was accepting fishing trips based on an *understanding* that that the trip was provided through Mr. Bailey's contacts with the lodge and the airline. To accept a trip on the understanding that it was arranged by someone with such significant business dealing with the government also clearly violates the Member's obligations under the *Act*.

Mr. Morin, as Premier, was in a position to be helpful - or not - to Mr. Bailey in the conduct of his business. Because of his extremely high public office, without any positive act the Premier has the power to ensure that the wheels of government operated smoothly for Mr. Bailey and that necessary doors were open.

There are other consultants and entrepreneurs in the Territories and beyond who would have a reasonable basis on which to fear favoritism towards the Premier's benefactor. There are other consultants and businesspeople, and even members of the general public, who would have been grateful for the access to the Premier, which Mr. Bailey received during a weekend trip. Ordinary people would have reason to question the integrity of government processes where the Premier could be seen as grateful or obliged to one person for private benefits received.

Inaccurate documents

Facts

Document 246

As part of the preliminary process to determine if a Conflict of Interest Complaint is to proceed to a public hearing, there is an opportunity under s.81(2) for a Member to provide an explanation or reason for conduct in question. As part of that process, and knowing that at that point the Commissioner had no access to Cabinet documents, Mr. Morin provided document 246.

Premier Morin, through written submission from his counsel by letter dated June 3, 1998, asked specifically that the Commissioner dismiss all complaints in relation to the Ft.

Resolution office complex on the basis of the documents and explanations provided. Even after the hearings were ordered, his counsel wrote to request further consideration of this issue and summary dismissal.

Document 246 turns out to be a less than accurate replacement for the minutes of the May 16, 1996 Cabinet meeting. It was drafted in the Premier's office and approved by the Premier. It was circulated personally by the Principal Secretary under circumstances which urged upon those Ministers its accuracy and truthfulness. (p. 3336).

The authors of document 246 failed to identify on the face of that document the date when the referenced meeting took place. It would have been a simple matter and an aid to the memory of the Ministers approached if that fact had been included.

The authors must have consulted some kind of Cabinet Document in order to prepare 246, otherwise they would not have known which Ministers had attended that meeting in order to solicit their signatures. If they had consulted the Minutes, they would have knowingly prepared a document which varied significantly from the minutes.

The Premier's explanation of the "pre-meeting" declaration and the fact that he left the "meeting room" rather than the meeting, indicates a further problem. Either there was a deliberate attempt to deceive by using language which suggested an alternate and ordinary meaning, or, given the total failure of the Premier to bring forward any witness to the Inquiry who had heard his declaration, he cobbled together a story after the fact in order to fit into a very restrictive reading of the document.

Supplemental filing

On November 19, 1996, Mr. Morin submitted an Amendment to Disclosure Statement (document 3576-3577) to David Hamilton, Clerk of the Legislature. His covering letter states, in part:

"My wife dealt with this matter but did so in accordance with the advice which we sought, and received from Mr. Fournier in the capacity he then had as Conflict of Interest Commissioner....."

"I am also enclosing a copy of the Offer to Purchase which my wife, Gladys Morin, entered into with the purchaser."

"I note that the advice we received, via Messrs. Fournier and Avison, likely required us to meet a standard beyond what the guidelines provide for, and perhaps reduced the amount we would otherwise have asked for the property, but we were content to proceed accordingly."

It is signed by Mr. Morin.

I find that this letter and the attached documents contain the following inaccuracies:

1. It is not accurate to say that Mrs. Morin “dealt with this matter...” as this suggests that the transaction was handled by Mrs. Morin. The suggestion is even stronger because Mr. Morin decides to enclose the only document his wife dealt with, the Offer to Purchase.
2. The Offer to Purchase, tendered with the letter, is itself inaccurate because it suggests -- it actually states -- that the land was in Mrs. Morin’s name. The land was, in fact, in Mr. Morin’s name. There was no clarification of this inaccuracy in the disclosure statement.
3. Mrs. Morin did not “deal with the matter in accordance with the advice which we sought and received from Mr. Fournier...” as this suggests that Mr. Fournier advised that Mrs. Morin should be involved. Mr. Fournier did not advise that she become involved.

Mr. Morin testified that Mr. Avison had suggested that Mrs. Morin become involved. Commission Counsel, in direct examination, offered Mr. Avison a chance to comment on Mrs. Morin’s participation in the negotiations. Mr. Avison’s provided no information or comment on her involvement.

Mr. Morin’s counsel did not ask Mr. Avison whether the Morins were acting on his advice. As a result, I cannot reasonably find that the involvement of Mrs. Morin was advised by Mr. Avison. In addition, Mr. Avison’s legal training makes it seem unlikely that he would make such a suggestion.

The involvement of Mrs. Morin was unnecessary, and added nothing of value to the sale process. Mr. Morin eventually signed the actual transfer documents: this was a legal requirement, as his name was on title. Her involvement gives the impression that Mr. Morin was trying to hide or obscure his own involvement.

4. The letter from Andrew Butler was also attached (see discussion of Ft. Resolution Office Complex for the text). By doing so Mr. Morin accepted and passed onto the Clerk and the records of the Assembly, a document with the following defects:
 - a. It was undated.
 - b. It came from someone who had very little to do with the actual negotiations (p.1446-47).
 - c. It contained the following falsehood:

All discussions/arrangements were with Gladys Morin, Don Morin took no part in the matter.”

This again obscures the actual transaction, and again, gives the impression that Mr. Morin had some reason or desire to hide the deal or his involvement in it.

Reasoning:

It is a matter of serious and self-evident concern when a political leader attempts to obscure his participation in any transaction through the use of misleading or false documentation. The Premier provided information as a matter of public record to officers of the legislative assembly - the Clerk and the Conflict of Interest Commissioner. He expected that information to be relied upon in processes mandated by the legislature.

It is unacceptable to mislead or try to mislead the Legislative Assembly at any time. Where a person is reporting on his or her own actions, the onus is even higher. The events in question were well within Premier Morin's personal knowledge; he was not relying on information provided to him by third parties. And the documents provided are quite clearly misleading.

Disclosure of this type is an important part of the transparency and accountability of government. The effect of dishonesty in the context of statements to the legislature can be presumed to have a significant effect on public confidence.

Use of misleading documents compromises the Member's integrity.

It is a serious breach of the *Act*.

Conclusions

This has been a long and expensive and largely unnecessary process.

The Act in s. 79.2 creates an easy and simple way for a Member who has a concern with any element of his or her obligations under the Act to simply write to the Conflict of Interest Commissioner and obtain a binding ruling.

The letter must be from and signed by the Member. In the letter and the exchange that follows, the Member must be completely honest about the situation. In return, the Member will receive written advice. If followed, this advice will protect the Member against any complaint under the Act on the basis of conflict of interest.

Mr. Morin knew about this section of the Act.

He could have asked for advice on his house.

He could have asked for advice on his fishing trip, or Lahm Ridge Towers, his relationship with Roland Bailey, or how to make a declaration at a Cabinet meeting and how it should be recorded. It would even be possible to request advice if you had made a declaration, but it failed to show up in the minutes of the meeting.

If Mr. Morin had made these requests, much of this Report would never have been written.

If Mr. Morin had properly informed his staff about his land dealings, another two issues would likely be gone from the terms of reference of this Inquiry.

If Mr. Morin had been honest and taken the care he should have with the documents he wrote, used and signed or asked others to sign and if he had set proper conflict standards for his staff, there would have been almost nothing left to inquire into.

If Mr. Morin had taken these steps, there would have been little need for the time and expense and the drain on northern resources which this hearing represents. He, and the people of the Northwest Territories, would have been spared the embarrassment of such a detailed inquiry into such serious allegations. He would have been spared the personal and political turmoil that will likely follow this report.

Instead, Mr. Morin has chosen a path of confrontation and counterattack.

Mr. Morin, in the Assembly and on the public record, challenged Mrs. Groenewegen "*or anyone else who may believe there is wrongdoing, to file a complaint against me with the Conflict of Interest Commissioner; that is, if they have the guts and the political backbone.*"

The record in these proceedings shows that from start to finish Mr. Morin has tried to use this Inquiry as a means to attack Mrs. Groenewegen, the complainant. He has not focused on his own office and conduct .

Mr. Morin is not entitled to live in a fancy big house unless he pays for it. Mr. Morin is not entitled to take a fishing trip arranged by a friend who has government contracts. Mr. Morin is obliged to govern himself by the standards set out in the *Act*.

It is now time for Mr. Morin to take responsibility for his actions.

It is also time for the Assembly to seriously consider what Mr. Morin has done.

Mr. Morin, on three occasions, has asked the Commissioner or the Clerk of the Assembly, and through them the Assembly itself and the public, to accept or act on documents which were not accurate and which he knew were not accurate.

Mr. Morin has arranged to receive special treatment and obtain a benefit from a Contractor who has done most of his \$150 million of business with the Government of the Northwest Territories. It is little wonder that there are rumours and rumblings of favouritism and preference. Even with the cleanest tendering in the world, if the people at the top are accepting personal benefits, the whole system will come under scrutiny.

Both of these violations were done with full knowledge, with time to reflect and with an understanding that others might not approve. I see them as wilful and deliberate violations of the Act.

Mr. Morin asked for and accepted free travel and fishing from a contractor who bid for many northern contracts. Mr. Morin knew that Mr. Bailey had post-employment obligations for the first year after he left the government. If Mr. Morin had cared to even look he had access to all the Cabinet Documents which would have confirmed the issues Mr. Bailey had been working with and around. He knew Mr. Bailey was his Principal Secretary's apartment mate. He knew of Mr. Bailey's extensive and controversial bids on major government consulting contracts.

You may say that it was an innocent fishing trip, but if you were Mr. Bailey's competitor you would have left the office angry and frustrated the day you learned about it. And you would think twice about tendering against a man with Mr. Bailey's inside track. That is bad for government and bad for the economy, because we need competitive tendering. It is bad for democracy at its basic levels when we no longer think of merit and ability as been the important factors and start to think of who-you-know and where-your-friends-are as being the basics for success.

When you are the Premier everyone is watching you. It is a position of high honour and high profile. You are setting the standard for others. The public service follow the example of what the Premier does as much as what the Premier says, and probably more. If the standard is low then you will attract and keep people who like low standards.

Mr. Morin forgot to tell his cabinet colleagues and his staff that he was selling some land in Fort Resolution to the Deninu K'ue Development Corporation. He was entitled to sell his land and the community was entitled to buy it. He was not entitled to promote or push forward the sale through his political office.

He says he was not at a meeting where he signed the minutes stating he was present. He says he really didn't have to make a declaration, or maybe he did, but he did it before the meeting started. This is missing the basic point. *He failed to inform anyone of the conflict.* As a result, no one knew that Mr. Morin and his office should not be involved in the Ft Resolution Office project.

The same day Danny Beaulieu came to Yellowknife to have Mrs. Morin sign the land deal, Mr. Morin's staff were calmly making appointments for Beaulieu to discuss progress on the project! His staff were contacting government departments and agencies to push through a deal which would put money directly into Mr. Morin's pocket.

When Mr. Morin's friends – and I use that label advisedly – obtained, under the most extraordinary circumstances, a hugely profitable office lease, which no one else had been able to get, Mr. Morin used his office and authority to tell everyone that the deal was fair and that those who complained were just whiners and snivellers. Mr. Morin was not believable because his own position was already compromised by accepting favours and benefits.

He brought down his own reputation and the reputation of his office of Premier. He brought down our reputation in the Northwest Territories. It will take years of work to regain what he has taken away from each of us.

There is nothing major wrong or out of date in the Northwest Territories law on this subject. The *Act* is clear. The basic principles are: full disclosure - so that conflicts are easy to identify; notice – so that the attention of others is drawn to your conflict and withdrawal – so that you do not become involved in advancing your own interests when you should be serving others. It is not the Act which needs changing here, it is the conduct of the Premier.

Recommendations

The Act requires that I make a recommendation to the Assembly of the appropriate penalty. I have heard the presentations made by Mr. Morin's lawyer, and those who want to read them can look at the transcripts which will accompany this report.

I am not prepared to read the possible punishments set out in the Act as being written from worst to best. There are times when a fine would be the best answer. I would impose a fine in a case where a member persistently failed to file his disclosure statements. There are times when restitution would be best. I would order restitution if an innocent person had a loss as a result of the members conduct.

When a Member uses his or her office to put cash into their own pockets, then I would take the position that the trust of the people had been betrayed to the point where the seat should be declared vacant.

I am fully aware that resignation or removal from a post as Minister would be the inevitable result of the Assembly accepting the findings I have made in every jurisdiction in Canada.

Reprimand

I recommend to the Assembly that the Member for Tu Nedhe be reprimanded for violating section 66(1) of the Act by obtaining a private benefit as a result of his office in relation to his residence at 43 Otto Drive, Yellowknife;

I recommend to the Assembly that the Member for Tu Nedhe be reprimanded for violating section 67(b) of the Act by failing to refrain from conduct which would erode public confidence in his integrity, in relation to his residence at 43 Otto Drive, Yellowknife;

I recommend to the Assembly that the Member for Tu Nedhe be reprimanded for violating section 67(a) of the Act by failing to perform his duties of office and arrange his private affairs in a manner to maintain public confidence in his impartiality, in relation to his relationship with Roland Bailey, during and after Mr. Bailey's year of post-employment restrictions;

I recommend to the Assembly that the Member for Tu Nedhe be reprimanded for violating section 67(b) of the Act by allowing his office to be used to advance his private interest in the Ft. Resolution Office Complex construction project;

I recommend to the Assembly that the Member for Tu Nedhe be reprimanded for violating section 69(1) of the Act for failing to declare a conflict at the Cabinet Meeting of May 16, 1996 in relation to his private interest in lands in Ft. Resolution;

I recommend to the Assembly that the Member for Tu Nedhe be reprimanded for violating section 76(1) of the Act by accepting a benefit in the form of air travel and accommodations from Roland Bailey in the spring of 1997;

I recommend to the Assembly that the Member for Tu Nedhe be reprimanded for violating section 67(a) of the Act by providing to the Clerk of the Assembly and to the Conflicts of Interest Commissioner documents which he knew to be untrue or to contain untruths.

Costs

Section 83(1)(b)(vii) of the Act permits the Commissioner, as a punishment, to make an recommendation to the Assembly that the member pay costs. Costs are based on the money spent to put forward a case.

Aside from Commission counsel and counsel for Mr. Morin, I recognized three participants in this proceeding: Jane Groenewegen, the M.L.A. from Hay River and complainant, Mike Mrdjenovich, businessman and Roland Bailey, businessman, both from Yellowknife. Over the course of the hearings the role of each has changed, but each has been important in achieving the balance needed to make this process work.

Mr. Mrdjenovich and Mr. Bailey say they do not want costs. Ms. Groenewegen has asked for her costs. She has been very reasonable. She has asked that her costs to bring forward the complaint be included. She has not asked that the costs of her participation in the hearings be used to find costs.

She says that she will rely on the Legal Defence fund and the money she has raised. I do not think that the people, companies and organizations who contributed to the Defence Fund saw their contribution as a way to help Donny Morin out of his obligation to pay costs. I am not prepared to total up all their contributions and apply them to Mr. Morin's credit.

I am satisfied that Ms. Groenewegen was a necessary and interested party in this proceeding. Particularly in the initial stages of the Inquiry she was the factor which moved this worthwhile complaint forward. This Legislation encourages public participation and allows for complaints from any person.

I still believe that there should be a regular way of funding complainants' and other's legal expenses. I would still be prepared to recommend paying Mrs. Groenewegen's legal fees to the Management Services Board, if they were prepared to consider the matter again. But in the absence of that decision or support, it is not Mrs. Groenewegen who should be paying for the costs of bringing this complaint forward.

I also consider that the conduct of the Member from Tu Nedhe suggests that he, of the two, should be the one to pay. The Premier directly challenged Ms. Groenewegen, in the Assembly, to file a conflicts complaint.

I have also taken into account the significant personal attacks on Mrs. Groenewegen as an aspect of the defense of this case, both through counsel in the hearings and directly by Premier Morin in the press. And these attacks continued right into the last minutes of the hearings.

If paying costs under the conflicts legislation is punishment, this is an appropriate case for it.

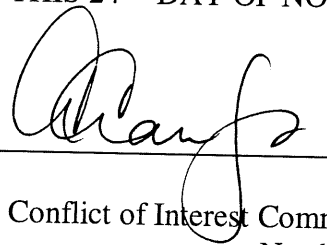
I recommend to the Assembly that, failing appropriate and full public funding, that Mr. Morin pay, and Ms. Groenewegen receive, all of Mrs. Groenewegen's costs in these hearings, from start to finish, plus one dollar, which is to be paid personally, in cash.

The dollar should be payable, whether or not there is public funding.

Thanks

I would like at this time to express to the Legislative Assembly, its Members, the Clerk of the Assembly and his staff, my thanks for their continuing assistance and support in the performance of my duties. They are always appreciated.

DATED AT YELLOWKNIFE IN THE NORTHWEST TERRITORIES
THIS 24TH DAY OF NOVEMBER, 1998



Anne Crawford
Conflict of Interest Commissioner for the
Northwest Territories

APPENDIX "A"

TERMS OF REFERENCE

IN THE MATTER OF A COMPLAINT TO THE CONFLICT OF
INTEREST COMMISSIONER WITH RESPECT TO ALLEGED
CONTRAVENTIONS OF PART III OF THE *LEGISLATIVE
ASSEMBLY AND EXECUTIVE COUNCIL ACT* BY THE
MEMBER FOR TU NEDHE

TERMS OF REFERENCE FOR INQUIRY

The Conflict of Interest Commissioner has received a complaint made pursuant to Part III of the *Legislative Assembly and Executive Council Act* (the "Act") dated February 16, 1998 from Jane Groenewegen in relation to the conduct of the Member for Tu Nedhe.

Having received further submissions from the person making the complaint and from the Member concerned, the Commissioner hereby directs that further inquiry be made into the complaint, including the holding of public hearings pursuant to section 82 of the Act. Such further inquiry will be made in respect to the following matters complained of:

1. The circumstances under which the Member came to reside in the house located on property presently owned by Nova Construction (1987) Ltd. and legally described as:

Lot Twenty-eight (28)
Block One Hundred Fifty One (151)
Plan 2403
Yellowknife

and whether the Member received a benefit as a result of the said residence being made available to him and whether the Member has by his conduct in relation to this issue contravened the Act.

2. The role of the Member, if any, in the 1997 decision of the Government of the Northwest Territories to extend the lease of office space in the Lahm Ridge Tower building located in Yellowknife, and whether any conduct of the Member in respect to that decision contravened the Act.
3. The role of the Member, if any, in the awarding of contracts involving the Government of the Northwest Territories and Nova Construction (1987) Ltd. or any other company in which Milan Mrdjenovich has an interest, and whether the Member's conduct in that regard contravened the Act.

4. The circumstances surrounding the sale by the Member of certain property located in Fort Resolution legally described as:

Lot Twenty-three (23)
Plan 58
Fort Resolution

and whether the Member received a benefit as a result of the said sale which contravened the Act, or whether the Member's conduct in respect to the said sale and the lease of office space by the Government of the Northwest Territories in the complex developed on the said land by Deninu K'ue Development Corporation contravened the Act.

5. The role of the Member, if any, in the transfer of the bison herd formerly located at Hanging Ice Ranch to the Deninu K'ue Ranch located near Fort Resolution, and whether his conduct in respect to the said transfer contravened the Act.
6. The role of the Member, if any, in the decision of the Government of the Northwest Territories to award a contract to Roland Bailey, or a company in which Mr. Bailey has an interest, for preparation of a report on privatization of the Petroleum Products Division, and whether the Member's conduct in respect to such award contravened the Act.
7. The conduct of the Member in respect to the Canada's Northwest Territories Government Aurora Fund (1996) and the Canada's Northwest Territories Government Aurora Fund II, and whether any such conduct contravened the Act.
8. Such further and other matters as may be relevant and arise from the investigation of the foregoing will be put to public inquiry.

Anne Crawford, Conflict of Interest
Commissioner for the Northwest Territories

APPENDIX "B"

LIST OF WITNESSES

IN THE MATTER OF A COMPLAINT TO THE CONFLICT OF
INTEREST COMMISSIONER WITH RESPECT TO ALLEGED
CONTRAVENTIONS OF PART III OF THE *LEGISLATIVE
ASSEMBLY AND EXECUTIVE COUNCIL ACT* BY THE
MEMBER FOR TU NEDHE

**WITNESSES AT THE PUBLIC HEARINGS
HELD OCTOBER 13 TO NOVEMBER 17, 1998**

<u>DATE</u>	<u>NAME OF WITNESSES</u>	<u>TRANSCRIPTS:</u>	
		<u>Volume</u>	<u>Page #</u>
October 13	Jane Gronewegen	Vol 1	1 - 94
October 14	Bruce Rattray Jane Gronewegen	Vol 2	95 - 300
October 15	David Murray Bonnie McTiernan-Craig Ken Rankin Ken Lovely	Vol 3	301 - 544
October 16	Ken Lovely Vince Dixon	Vol 4	545 - 720
October 21	Michael Oram Chris Morgan Vince Dixon Al Marceau	Vol 5	721 - 939
October 22	Ken Pearman Lauchlin MacDonald Michael Burns	Vol 6	940 - 1129

<u>DATE</u>	<u>NAME OF WITNESSES</u>	<u>TRANSCRIPTS:</u>	
		<u>Volume</u>	<u>Page #</u>
October 23	Beverly Chamberlin Joseph Handley Danny Beaulieu	Vol 7	1130 - 1341
October 24	Danny Beaulieu Sue Bevington Andrew Butler Larry Jones	Vol 8	1342 - 1506
October 27	Irv Norn Chief Don Balsille Marie Coe	Vol 9	1507 - 1702
October 28	Cormack Gates Josie Van Lent Donald Avison Ralph Shelton Vlado Brcic	Vol 10	1703 - 1936
October 29	Ferne Babuik Alan Vaughan Lew Voytilla	Vol 11	1937 - 2124
November 3	The Hon. John Todd The Hon. Goo Arlooktoo The Hon. James Antoine	Vol 12	2125 - 2257

<u>DATE</u>	<u>NAME OF WITNESSES</u>	<u>TRANSCRIPTS:</u>	
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APPENDIX "C"

LEGISLATION

PART III
*LEGISLATIVE ASSEMBLY &
EXECUTIVE COUNCIL ACT*

Oath of allegiance and office	60. A Minister shall, before assuming any duties of office, take an oath of allegiance in Form 1 and an oath of office in Form 4 of Schedule C before the Commissioner.	60. Avant son entrée en fonctions, le ministre prête, devant le commissaire, le serment d'allégeance selon la formule 1 et le serment professionnel selon la formule 4 de l'annexe C.	Serments
Responsibility of Minister	61. A Minister shall have responsibility for all matters arising within the department over which the Minister has authority.	61. Le ministre a la responsabilité de toutes les questions qui se posent au sein de son ministère.	Responsabilité du ministre
Absence, incapacity or inability	62. (1) A Minister who is or expects to be temporarily absent, incapacitated or unable to act may request the Premier to designate another Minister to act in the Minister's stead.	62. (1) En cas ou en prévision d'absence ou d'empêchement temporaires, le ministre peut demander au premier ministre de désigner un autre ministre pour assurer l'intérim.	Absence ou empêchement temporaire du ministre
Designation of acting Minister	(2) Where a Minister has requested the Premier to designate another Minister to act in the Minister's stead or where a Minister is unable to make such a request but is temporarily absent, incapacitated or unable to act, the Premier may designate another Minister to act during the temporary absence, incapacity or inability of that Minister.	(2) Lorsqu'un ministre a demandé au premier ministre de désigner un autre ministre pour assurer l'intérim ou qu'il est incapable d'en faire la demande, en raison d'une absence ou d'un empêchement temporaire, le premier ministre peut désigner un autre ministre pour assurer l'intérim pendant l'absence ou l'empêchement temporaire du ministre.	Désignation du ministre intérimaire
Validity of acts done	(3) All acts done by a Minister designated under subsection (2) shall have the same effect as if done by the Minister in whose stead that Minister is acting. S.N.W.T 1994, c.30, s.1.	(3) Les actes accomplis par le ministre désigné en conformité avec le paragraphe (2) sont aussi valables que s'ils avaient été accomplis par le ministre remplacé. L.T.N.-O. 1994, ch. 30, art. 1.	Validité des actes accomplis
Committees	63. The Executive Council may establish such committees of the Executive Council to aid and advise in the executive government as it considers advisable.	63. Le Conseil exécutif peut constituer les comités du Conseil exécutif qu'il estime indiqués pour aider et conseiller le gouvernement.	Comités
Agreements	64. (1) Subject to section 19 of the <i>Northwest Territories Act</i> (Canada) and any enactment, a Minister may enter into agreements for or on behalf of (a) the department over which the Minister has authority; or (b) the Government of the Northwest Territories.	64. (1) Sous réserve de l'article 19 de la <i>Loi sur les Territoires du Nord-Ouest</i> (Canada) et de tout texte législatif, un ministre peut conclure des accords pour le compte : a) soit de son ministère; b) soit du gouvernement des Territoires du Nord-Ouest.	Accords
Delegation	(2) A Minister may, by written authorization approved by the Executive Council, delegate the power to enter into agreements under subsection (1) to any person in the public service, subject to such limitations or conditions as the Minister may set out in the authorization.	(2) Un ministre peut, par voie d'autorisation écrite approuvée par le Conseil exécutif, déléguer le pouvoir de conclure les accords prévus au paragraphe (1) à un employé de la fonction publique, sous réserve des limitations ou des conditions que le ministre énonce dans l'autorisation.	Délégation

PART III

CONFLICT OF INTEREST

Definitions 65. (1) In this Part,

PARTIE III

CONFLIT D'INTÉRÊTS

65. (1) Les définitions qui suivent s'appliquent à la présente partie. Définitions

"department" means a department as defined in the *Financial Administration Act* and a public agency as defined in the *Financial Administration Act*; (*ministère*)

"dependent child" means any child of a member who resides with the member and is under the age of 19 years; (*enfant à charge*)

"spouse" includes a person who is married to a member and a person with whom the member is living in a conjugal relationship outside marriage, but does not include a person to whom a member is married if the member and that person are separated. (*conjoint*)

«conjoint» S'entend en outre de la personne avec qui le député vit dans une union extra-conjugale ou avec qui il est marié, à l'exclusion toutefois de la personne avec qui le député est marié s'ils sont séparés. (*spouse*)

«enfant à charge» Tout enfant du député qui habite avec le député et qui est âgé de moins de 19 ans. (*dependent child*)

«ministère» S'entend d'un ministère au sens de la *Loi sur la gestion des finances publiques* et d'un organisme public au sens de la *Loi sur la gestion des finances publiques*. (*department*)

Controlling interest in a corporation

(2) For purposes of this Part, a person or group of persons holds a controlling interest in a corporation if that person or group of persons exercises direction over, or directly or indirectly owns, shares of the corporation carrying more than 10% of the voting rights attached to all outstanding shares of the corporation. R.S.N.W.T. 1988, c. 120 (Supp.), s. 5; S.N.W.T. 1996, c. 9, Sch. B, s. 1.

(2) Pour l'application de la présente partie, une personne ou un groupe de personnes détient le contrôle d'une personne morale lorsque cette personne ou ce groupe de personnes a le contrôle ou détient, directement ou indirectement, des actions émises par la personne morale qui emportent plus de 10 % des droits de vote afférents à toutes les actions en circulation de la personne morale. L.R.T.N.-O. 1988, ch. 120 (Suppl.), art. 5; L.T.N.-O. 1996, ch. 9, Ann. B, art. 1.

Contrôlé d'une personne morale

Conflict of interest

66. (1) For the purposes of this Part, a member has a conflict of interest when the member, or the spouse or a dependent child of the member, has significant private interests that afford the member, or the spouse or dependent child of the member, the opportunity to directly or indirectly benefit from the performance of any of the duties of office of the member.

66. (1) Pour l'application de la présente partie, il y a conflit d'intérêts lorsque le député, son conjoint ou un enfant à charge du député détient des intérêts privés appréciables grâce auxquels il ou elle pourrait se trouver en mesure d'obtenir des avantages, directs ou indirects, du fait même de l'exercice des fonctions de député.

Conflit d'intérêts

Exception

(2) A member does not have a conflict of interest under subsection (1) in relation to an interest that

- (a) benefits the member or the spouse or a dependent child of the member as one of a broad class of persons;
- (b) is conferred as
 - (i) an indemnity, allowance or expense paid to members under this Act, or to Ministers by directive of the Executive Council, or
 - (ii) a benefit paid to recipients under the *Legislative Assembly Retiring Allowances Act* or the *Supplementary Retiring Allowances Act*;

(2) Il n'y a toutefois pas conflit d'intérêts aux termes du paragraphe (1) relativement à un intérêt qui :

- a) profite au député, à son conjoint ou à un enfant à charge du député au titre de son appartenance à une vaste catégorie sociale;
- b) est accordé :
 - (i) à titre d'indemnité, d'allocation ou de remboursement d'une dépense aux députés en vertu de la présente loi ou aux ministres en vertu des directives du Conseil exécutif,
 - (ii) à titre de prestations en vertu de la *Loi sur les prestations de retraite des députés de*

Exception

- (c) is an exempt interest of the member or of the spouse or a dependent child of the member; or
- (d) is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member in the performance of the duties of office of the member.

l'Assemblée législative ou de la Loi sur les allocations supplémentaires de retraite;

- c) est un intérêt exempté du député, de son conjoint ou d'un enfant à charge du député;
- d) est de par sa nature tellement éloigné ou de si peu d'importance qu'il ne peut être perçu comme pouvant influencer le député dans l'exercice de ses fonctions.

Exempt interests

- (3) An interest in any of the following is an exempt interest for the purposes of paragraph (2)(c):
- (a) assets, liabilities and financial interests having a value of less than \$10,000;
 - (b) a source of income that pays less than \$1000 in a 12 month period;
 - (c) cash on hand or on deposit with a chartered bank, trust company, credit union or other financial institution in Canada that is lawfully entitled to accept deposits;
 - (d) personal property used for transportation or for household, educational, recreational, social or aesthetic purposes;
 - (e) bonds, investments and securities of fixed value issued or guaranteed by any government in Canada or by an agency of any such government;
 - (f) an investment in open-ended mutual funds;
 - (g) guaranteed investment certificates or other similar financial instruments;
 - (h) annuities and life insurance policies;
 - (i) any registered retirement savings plan, pension plan or employee benefit plan that is not self-administered;
 - (j) pension rights;
 - (k) support payments;
 - (l) a liability to a financial institution referred to in paragraph (c), where the liability relates to assets referred to in paragraphs (d) to (j). R.S.N.W.T. 1988,c.120(Supp.),s.5.

(3) Pour l'application de l'alinéa 2c), les intérêts exemptés sont les suivants :

- a) les biens, dettes et intérêts financiers dont la valeur est inférieure à 10 000 \$;
- b) toute source de revenu, si ce revenu est inférieur à 1 000 \$ au cours d'une période de 12 mois;
- c) l'avoir en argent comptant ou en dépôt dans une banque à charte, société de fiducie, caisse de crédit ou autre institution financière au Canada légalement habilitée à recevoir des dépôts;
- d) les biens meubles à usage domestique, éducatif, social, décoratif, récréatif ou de transport;
- e) les obligations, placements ou titres à valeur fixe émis ou garantis par tout gouvernement au Canada ou l'un de ses organismes;
- f) les placements dans des sociétés d'investissement à capital variable ou dans des fonds mutuels;
- g) les certificats de placement garantis ou autres effets financiers semblables;
- h) les rentes et les polices d'assurance-vie;
- i) tout régime enregistré d'épargne-retraite, régime de pension ou régime de prestations aux employés qui n'est pas autogéré;
- j) les droits à pension;
- k) les pensions alimentaires;
- l) les éléments de passif dus à une institution financière visée à l'alinéa c), lorsque ces éléments de passif sont liés aux éléments d'actifs visés aux alinéas d) à j). L.R.T.N.-O. 1988, ch. 120 (Suppl.), art. 5.

OBLIGATIONS OF MEMBERS

Obligations of members

67. Each member shall
- (a) perform his or her duties of office and arrange his or her private affairs in such

OBLIGATIONS DES DÉPUTÉS

67. Les obligations suivantes incombent au député : Liste
- a) s'acquitter des devoirs de sa charge et régler ses affaires privées de manière à

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. R.S.N.W.T. 1988,c.120(Suppl.),s.5.

assurer la confiance du public en son intégrité, son objectivité et son impartialité;

- b) ne pas accepter de rémunération, de don ou d'avantage susceptible de miner la confiance du public en son intégrité, son objectivité et son impartialité, et agir d'une manière qui soutienne l'examen public le plus minutieux;
- c) gérer ses affaires privées en conformité avec les dispositions de la présente partie et de la présente loi, et agir, en général, de façon à éviter tout conflit d'intérêts;
- d) s'efforcer le plus possible de résoudre, en faveur de l'intérêt public, tout conflit d'intérêts éventuel. L.R.T.N.-O. 1988, ch. 120 (Suppl.), art. 5.

Insider information

68. (1) A member shall not use or share information that is gained in the execution of an office of the member and that is not available to the general public to further or seek to further, directly or indirectly, the private interests of the member or of the spouse or a dependent child of the member.

68. (1) Le député ne peut se servir des renseignements qu'il obtient dans l'exercice de sa charge et qui ne sont pas accessibles au grand public pour favoriser ou chercher à favoriser, même indirectement, ses intérêts privés, ceux de son conjoint ou ceux d'un de ses enfants à charge.

Renseignements d'initiés

Influence

(2) A member shall not use an office of the member to seek to influence a decision made by another person to further the private interests of the member or of the spouse or a dependent child of the member. R.S.N.W.T. 1988,c.120(Suppl.),s.5.

(2) Le député ne peut se servir de sa charge pour chercher à influencer une décision prise par une autre personne en faveur de ses intérêts privés, de ceux de son conjoint ou de ceux d'un de ses enfants à charge. L.R.T.N.-O. 1988, ch. 120 (Suppl.), art. 5.

Influence

Withdrawal from meeting by member

69. (1) A member who has a conflict of interest in a matter that is before the Legislative Assembly, the Management and Services Board or the Executive Council, or before a committee of the Legislative Assembly or the Executive Council, shall, if present at a meeting considering the matter,

- (a) disclose the general nature of the conflict of interest; and
- (b) withdraw from the meeting without voting or participating in the consideration of the matter.

69. (1) Le député qui a un conflit d'intérêts dans une affaire qui est devant l'Assemblée législative, le Bureau de régie et des services, le Conseil exécutif, ou devant un comité de l'Assemblée législative ou du Conseil exécutif, est tenu, s'il est présent à la réunion où l'affaire est étudiée :

- a) de divulguer la nature générale du conflit d'intérêts;
- b) de se retirer de la réunion sans exercer son droit de vote ou sans participer à l'étude de l'affaire.

Retrait d'une réunion

Disclosure by Speaker

(2) Where the Speaker has a conflict of interest in any matter relating to the performance of the duties of the Speaker, the Speaker shall

- (a) disclose the general nature of the conflict of interest to the Management and Services Board;
- (b) delegate to the Deputy Speaker the responsibility to perform the duties of the Speaker in respect of the matter; and

(2) Le président qui a un conflit d'intérêts dans une affaire qui concerne l'exercice de ses fonctions doit :

- a) divulguer la nature générale du conflit d'intérêts au Bureau de régie et des services;
- b) déléguer au président adjoint la responsabilité de s'acquitter des fonctions du président en ce qui

Divulgence du président

(c) refrain at all times from attempting to influence any decision in respect of the matter.

concerne l'affaire;
c) s'abstenir en tout temps de tenter d'influencer une décision relative à l'affaire.

Disclosure
by Minister

(3) A Minister who has a conflict of interest in any matter relating to the performance of the duties of the Minister shall

- (a) disclose the general nature of the conflict of interest to the Executive Council;
- (b) delegate to a Minister designated by the Premier the responsibility to perform his or her duties in respect of the matter; and
- (c) refrain at all times from attempting to influence any decision in respect of the matter. R.S.N.W.T. 1988, c.120(Suppl.), s.5; S.N.W.T 1994, c.30, s.1.

(3) Le ministre qui a un conflit d'intérêts dans une affaire qui concerne l'exercice de ses fonctions doit :

Divulgence
du ministre

- a) divulguer la nature générale du conflit d'intérêts au Conseil exécutif;
- b) déléguer au ministre désigné par le premier ministre la responsabilité de s'acquitter des fonctions du ministre en ce qui concerne l'affaire;
- c) s'abstenir en tout temps de tenter d'influencer une décision relative à l'affaire. L.R.T.N.-O. 1988, ch. 120 (Suppl.), art. 5; L.T.N.-O. 1994, ch. 30, art. 1.

Lobbying

70. A member shall not make representations for remuneration on behalf of any person, with respect to

- (a) the awarding of a contract by the Government of the Northwest Territories or a department;
- (b) the extension of a benefit to a person by the Government of the Northwest Territories or a department; or
- (c) any other matter that relates directly or indirectly to the performance of the duties of office of the member. R.S.N.W.T. 1988, c.120(Suppl.), s.5.

70. Le député ne peut faire de représentations pour le compte d'autrui en échange d'une rémunération, en ce qui concerne :

Lobbying

- a) l'octroi d'un contrat par le gouvernement des Territoires du Nord-Ouest ou par un ministère;
- b) la prolongation d'un avantage conféré à une personne par le gouvernement des Territoires du Nord-Ouest ou par un ministère;
- c) toute autre affaire qui est liée directement ou indirectement à l'exercice des fonctions du député. L.R.T.N.-O. 1988, ch. 120 (Suppl.), art. 5.

CONTRACTS AND FINANCIAL INTERESTS

CONTRATS ET INTÉRÊTS FINANCIERS

Contracts held by member

71. (1) Subject to section 75.1, a member shall not hold or enter into any contract with the Government of the Northwest Territories, or with a department.

71. (1) Sous réserve de l'article 75.1, un député ne peut détenir ni conclure un contrat avec le gouvernement des Territoires du Nord-Ouest ou avec un ministère.

Contrats détenus par un député

Contracts held by spouse or dependent children

(2) A spouse or dependent child of a member may hold or enter into a contract with the Government of the Northwest Territories or a department other than a contract for or on behalf of the member.

(2) Le conjoint ou l'enfant à charge du député peut détenir ou conclure un contrat avec le gouvernement des Territoires du Nord-Ouest ou un ministère, autre qu'un contrat pour ou au nom du député.

Contrats détenus par le conjoint ou les enfants à charge

Time for compliance

(3) Within 60 days of the commencement of the first session of the Legislative Assembly after the election of a member to the Legislative Assembly, the member shall ensure that his or her personal affairs are so arranged that there is no contravention of this section. R.S.N.W.T. 1988, c.120(Suppl.), s.5; S.N.W.T. 1994, c.31, s.2.

(3) Le député s'assure que ses affaires personnelles sont conformes aux exigences du présent article dans les 60 jours qui suivent le début de la première session de l'Assemblée législative qui suit son élection. L.R.T.N.-O. 1988, ch. 120 (Suppl.), art. 5; L.T.N.-O. 1994, ch. 31, art. 2.

Délai

Disclosure report

72. (1) A member shall file a disclosure report with the Clerk where a contract is held or entered into between the Government of the Northwest

72. (1) Le député dépose auprès du greffier un rapport de divulgation lorsqu'un contrat est détenu ou conclu entre le gouvernement des Territoires du

Rapport de divulgation

Territories or a department and

- (a) a corporation in which the member has a controlling interest; or
- (b) a corporation in which a corporation referred to in paragraph (a) has a controlling interest singly or collectively with the member or any other corporation referred to in paragraph (a).

Content and time of filing of disclosure report

- (2) A disclosure report filed under subsection (1) must
 - (a) indicate the nature and value of the contract and the circumstances under which the contract was entered into; and
 - (b) be filed
 - (i) within 60 days of the commencement of the first session of the Legislative Assembly after the election of the member to the Legislative Assembly, where the member holds the contract at the commencement of that session, or
 - (ii) within 30 days of the entering into of a contract, where the contract is entered into after the commencement of the session referred to in subparagraph (i).
- R . S . N . W . T .
1988,c.120(Supp.),s.5.

Nord-Ouest ou un ministère :

- a) et une personne morale dont le député a le contrôle;
- b) et une personne morale dont une personne morale visée à l'alinéa a) a le contrôle, séparément ou collectivement avec le député ou toute autre personne morale visée à l'alinéa a).

- (2) Le rapport de divulgation déposé en vertu du paragraphe (1) doit :
 - a) indiquer la nature et la valeur du contrat ainsi que les circonstances qui ont entouré sa conclusion;
 - b) être déposé :
 - (i) dans les 60 jours qui suivent le début de la première session de l'Assemblée législative qui suit l'élection du député à l'Assemblée législative, lorsque le député détient le contrat au début de la session,
 - (ii) dans les 30 jours qui suivent la conclusion du contrat, lorsque le contrat est conclu après le début de la session visée au sous-alinéa (i).
- L.R.T.N.-O. 1988, ch. 120
(Suppl.), art. 5.

Contenu du rapport et délai

Outside interests

73. (1) The Speaker or a Minister shall not, except as may be required as a duty of office,
- (a) engage in employment or in the practice of a profession;
 - (b) carry on a business, other than managing routine personal financial interests; or
 - (c) hold an office or directorship in any organization other than a social club, religious organization or political party.

73. (1) À l'exclusion de ce qui est requis par l'exercice de ses fonctions, le président ou le ministre ne peut :
- a) exercer une profession ou occuper un emploi;
 - b) exercer des activités commerciales autres que la gestion courante de ses intérêts financiers personnels;
 - c) occuper un poste au sein d'un organisme ou faire partie du conseil d'administration d'un organisme autre qu'un club social, une organisation religieuse ou un parti politique.

Intérêts extérieurs

Spouse or dependent children of Speaker or Minister

- (2) The Speaker or a Minister shall ensure that his or her spouse or dependent children do not hold or enter into a contract, including a contract of employment, with any department of the Government of the Northwest Territories for which the Speaker or the Minister is responsible.

- (2) Le président ou le ministre s'assure que ni son conjoint ni son enfant à charge ne détient un contrat ou ne conclut un contrat, y compris un contrat de travail, avec tout ministère du gouvernement des Territoires du Nord-Ouest dont il est responsable.

Conjoint ou enfants à charge du président ou du ministre

Corporation controlled by Speaker or Minister

- (3) The Speaker or a Minister shall ensure that no contract is held or entered into between a department for which the Speaker or the Minister is

- (3) Le président ou le ministre s'assure qu'aucun contrat n'est détenu ou conclu entre un ministère dont le président ou le ministre est

Personne morale contrôlée par le président ou

responsible and

- (a) a corporation in which the Speaker or the Minister or the spouse and dependent children of the Speaker or the Minister individually or collectively have a controlling interest; or
- (b) a corporation in which a corporation referred to in paragraph (a) has a controlling interest singly or collectively with the Speaker or the Minister and the spouse and dependent children of the Speaker or the Minister or any other corporation referred to in paragraph (a).

Time for compliance

(4) Within 60 days after being elected as Speaker or appointed as a Minister, the Speaker or Minister shall ensure that his or her personal affairs are so arranged that there is no contravention of this section. R.S.N.W.T 1988,c.120(Supp.),s.5.

Contracts with former Speaker or Minister

74. (1) Subject to section 75.1, where a former member served as Speaker or as a Minister within 12 months before ceasing to hold office as a member, the former member shall not, unless 12 months have passed from the day the former member ceased to hold office as a Speaker or as a Minister,

- (a) accept a contract with any department for which the former member was responsible in his or her capacity as Speaker or as a Minister during the 12 months before he or she ceased to hold office as Speaker or as a Minister; or
- (b) make representations, for remuneration, on behalf of any person, with respect to a contract with any department for which the former member was responsible in his or her capacity as Speaker or as a Minister during the 12 months before he or she ceased to hold office as Speaker or as a Minister.

Offence

(2) A former member who contravenes subsection (1) is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding \$5,000.

Defence

(3) A former member is not guilty of an offence under this section if he or she establishes that the contravention of this section was trivial or was committed through inadvertence or by reason of an error in judgment made in good faith. R.S.N.W.T.

responsable :

- a) et une personne morale dont le président ou le ministre ou le conjoint et les enfants à charge du président ou du ministre ont le contrôle, individuellement ou collectivement;
- b) et une personne morale dont une personne morale visée à l'alinéa a) a le contrôle, séparément ou collectivement avec le président ou le ministre et le conjoint et les enfants à charge du président ou du ministre ou toute autre personne morale visée à l'alinéa a).

le ministre

(4) Le président ou le ministre s'assure que ses affaires personnelles sont conformes aux exigences du présent article dans les 60 jours qui suivent son élection à titre de président ou sa nomination à titre de ministre. L.R.T.N.-O. 1988, ch. 120 (Suppl.), art. 5.

Délai

74. (1) Sous réserve de l'article 75.1, l'ancien député qui a agi à titre de président ou de ministre dans les 12 mois qui ont précédé la date où il a cessé d'exercer ses fonctions de député, ne peut, à moins que 12 mois ne se soient écoulés à compter de la date où il a cessé d'exercer ses fonctions de président ou de ministre :

- a) accepter un contrat avec aucun ministère dont il a été responsable en sa qualité de président ou de ministre pendant les 12 mois qui ont précédé la date à laquelle il a cessé d'exercer ses fonctions de président ou de ministre;
- b) faire, pour le compte d'autrui et en échange d'une rémunération des représentations en ce qui concerne un contrat avec aucun ministère dont il a été responsable en sa qualité de président ou de ministre pendant les 12 mois qui ont précédé la date à laquelle il a cessé d'exercer ses fonctions de président ou de ministre.

Contrats avec un ancien président ou ministre

(2) Un ancien député qui contrevient au paragraphe (1) commet une infraction punissable sur déclaration de culpabilité par procédure sommaire et est passible d'une amende maximale de 5 000 \$.

Infraction

(3) L'ancien député ne commet pas une infraction aux termes du présent article lorsqu'il établit que la contravention au présent article était frivole ou a été perpétrée par inadvertance ou à la suite d'une erreur de jugement commise de bonne

Défense

1988,c.120(Suppl.),s.5; S.N.W.T. 1994,c.31,s.3.

foi. L.R.T.N.-O. 1988, ch. 120 (Suppl.), art. 5;
L.T.N.-O. 1994, ch. 31, art. 3.

Exempt
contracts

75. (1) Sections 71 to 73 do not apply to a contract for the provision to the member or to the spouse or dependent children of the member of

- (a) accommodation; and
- (b) any service, commodity, subsidy, loan or other benefit that the member or the spouse or dependant of the member is entitled to receive as one of a broad class of persons.

75. (1) Les articles 71 à 73 ne s'appliquent pas à un contrat qui procure au député ou à son conjoint ou à son enfant à charge :

- a) un logement;
- b) un service, un produit, une subvention, un prêt ou quelque autre avantage auquel le député ou son conjoint ou son enfant à charge a droit au titre de son appartenance à une vaste catégorie sociale.

Contrats
exemptés

Exempt
contracts of
former
members

(1.1) Paragraph 74(1)(a) does not apply to a contract for the provision to the former member of

- (a) accommodation; and
- (b) any service, commodity, subsidy, loan or other benefit that the former member or the spouse or dependant of the former member is entitled to receive as one of a broad class of persons.

(1.1) L'alinéa 74(1)a ne s'applique pas à un contrat qui procure à l'ancien député :

- a) un logement;
- b) un service, un produit, une subvention, un prêt ou quelque autre avantage auquel l'ancien député ou son conjoint ou son enfant à charge a droit au titre de son appartenance à une vaste catégorie sociale.

Exemption des
contrats des
anciens
députés

Exempt
contracts for
public services
or for minimal
consideration

(2) Sections 71 and 72 and paragraph 74(1)(a) do not apply to a contract

- (a) where the value of any consideration to be received under the contract from the Government of the Northwest Territories or a department does not exceed \$1000; or
- (b) for the provision of services routinely required by individual members of the public. R.S.N.W.T. 1988,c.120(Suppl.), s.5; S.N.W.T. 1994,c.31,s.4.

(2) Les articles 71 et 72 et l'alinéa 74(1)a ne s'appliquent pas à un contrat :

- a) lorsque la valeur de toute contrepartie à recevoir du gouvernement des Territoires du Nord-Ouest ou d'un ministère aux termes du contrat ne dépasse pas 1 000 \$;
- b) qui procure des services généralement exigés par les particuliers. L.R.T.N.-O. 1988, ch. 120 (Suppl.), art. 5; L.T.N.-O. 1994, ch. 31, art. 4.

Exemption
des contrats
de moins de
1 000 \$ ou des
particuliers

Application
by member for
authorization
of contract

75.1. (1) A member may apply to the Conflict of Interest Commissioner for authorization to accept a contract that the member is otherwise prohibited from accepting by operation of subsection 71(1).

75.1. (1) Sur demande auprès du commissaire aux conflits d'intérêts, un député peut obtenir l'autorisation d'accepter un contrat qu'il lui serait autrement défendu d'accepter en raison du paragraphe 71(1).

Demande
d'autorisation
du député

Application
by former
member for
authorization
of contract

(2) A former member to whom section 74 applies may apply to the Conflict of Interest Commissioner for authorization to accept a contract that the former member is otherwise prohibited from accepting by operation of subsection 74(1).

(2) Sur demande auprès du commissaire aux conflits d'intérêts, un ancien député visé par l'article 74 peut obtenir l'autorisation d'accepter un contrat qu'il lui serait autrement défendu d'accepter en raison du paragraphe 74(1).

Demande
d'autorisation
de l'ancien
député

Authorization
of contract

(3) The Conflict of Interest Commissioner may authorize the member or former member to accept the contract, subject to such conditions as the Conflict of Interest Commissioner considers appropriate to impose, where he or she is satisfied that

- (a) the consideration and terms of the contract are reasonable; and

(3) Sous réserve des conditions qu'il estime nécessaires de fixer, le commissaire aux conflits d'intérêts peut permettre au député ou à l'ancien député d'accepter le contrat lorsqu'il est convaincu, à la fois, que :

- a) la contrepartie et les conditions du contrat sont raisonnables;
- b) l'implication du député ou de l'ancien

Autorisation

(b) it is not contrary to the public interest to authorize the member or former member to participate in the contract.

député au niveau du contrat n'est pas contraire à l'intérêt public.

Compliance with conditions

(4) A member or former member who is authorized to accept a contract under subsection (3) shall comply with any conditions imposed by the Conflict of Interest Commissioner. S.N.W.T. 1994,c.31,s.5; S.N.W.T. 1996,c.9,Sch.B,s.2.

(4) Le député ou l'ancien député qui obtient l'autorisation d'accepter un contrat doit respecter les conditions fixées par le commissaire aux conflits d'intérêts. L.T.N.-O. 1994, ch. 31, art. 5; L.T.N.-O. 1996, ch. 9, Ann. B, art. 2.

Respect des conditions

GIFTS AND BENEFITS

DONS ET AVANTAGES

Fees, gifts and benefits

76. (1) A member shall not accept any remuneration, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office.

76. (1) Sauf dans le cas d'une indemnisation qu'autorise la loi, le député ne peut accepter de rémunération, de dons ni d'avantages personnels qui sont liés, directement ou indirectement, à l'exercice de ses fonctions.

Rémunérations, dons et avantages

Exception

(2) Subsection (1) does not apply to a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.

(2) Le paragraphe (1) ne s'applique pas aux dons ni aux avantages personnels reçus dans le cadre du protocole ou d'obligations sociales qui accompagnent habituellement les charges de la fonction.

Exception

Property of office

(3) Any gift referred to in subsection (2) having a value exceeding \$400 is the property of the Legislative Assembly or the Government of the Northwest Territories, and shall not be retained by the member at the expiry of his or her term of office.

(3) Tout don visé au paragraphe (2) dont la valeur est supérieure à 400 \$ devient la propriété de l'Assemblée législative ou du gouvernement des Territoires du Nord-Ouest et ne peut être gardé par le député à l'expiration de son mandat.

Propriété de l'Assemblée législative

Disclosure of benefit

(4) Where a member receives a personal benefit referred to in subsection (2) having a value exceeding \$400, the member shall, within 30 days after receiving the personal benefit, file with the Clerk a disclosure report indicating the nature and source of the benefit and the circumstances under which it was given or accepted.

(4) Le député qui reçoit un avantage personnel visé au paragraphe (1) dont la valeur est supérieure à 400 \$ dépose auprès du greffier, dans les 30 jours qui suivent la date à laquelle l'avantage a été reçu, un rapport de divulgation indiquant la nature et la provenance de l'avantage ainsi que les circonstances dans lesquelles il a été remis et accepté.

Divulgation d'un avantage

Disclosure of gifts

(5) Where in any year the member receives from one source two or more gifts each having a value less than \$400, the member shall, if the aggregate value of the gifts received in the year exceeds \$400, file with the Clerk within 30 days after the end of the year a disclosure report indicating the nature and source of the gifts, and the circumstances under which the gifts were received. R.S.N.W.T. 1988,c.120(Supp.),s.5.

(5) Le député qui reçoit au cours d'une année, d'une même source, deux dons ou plus dont la valeur est inférieure à 400 \$ chacun doit, si la valeur globale des dons reçus dans l'année est supérieure à 400 \$, déposer auprès du greffier, dans les 30 jours qui suivent la fin de l'année, un rapport de divulgation indiquant la nature et la provenance des dons ainsi que les circonstances dans lesquelles ils ont été reçus. L.R.T.N.-O. 1988, ch. 120 (Suppl.), art. 5.

Divulgation d'un don

DISCLOSURE

DIVULGATION

Disclosure statement

77. (1) A member shall file with the Clerk a disclosure statement in a form established by the Management and Services Board within 60 days after

77. (1) Le député dépose auprès du greffier un état de divulgation dans la forme prescrite par le Bureau de régie et des services dans les 60 jours qui suivent :

État de divulgation

- (a) the commencement of the first session of the Legislative Assembly after the election of the member; and
- (b) each anniversary of the day referred to in paragraph (a).

- a) le début de la première session de l'Assemblée législative qui suit l'élection du député;
- b) chaque date anniversaire du jour visé à l'alinéa a).

Content of disclosure statement

of (2) A disclosure statement must contain a report

- (a) the source and amount of any income received by the member and the spouse and dependent children of the member
 - (i) in the 12 months preceding the filing of a disclosure statement under paragraph (1)(a), in the case of a disclosure statement filed under paragraph (1)(a), or
 - (ii) for the period following the filing of the previous disclosure statement, in the case of a disclosure statement filed under paragraph (1)(b);
- (b) all assets, liabilities and financial interests of the member and the spouse and dependent children of the member; and
- (c) all interests of the member and the spouse and dependent children of the member in any corporation or partnership, including a statement identifying
 - (i) any corporation in which the member and the spouse and dependent children of the member individually or collectively have a controlling interest, and
 - (ii) any corporation in which a corporation referred to in subparagraph (i) has a controlling interest singly or collectively with the member and the spouse and dependent children of the member and any other corporation referred to in subparagraph (i).

Supplemental disclosure statement

(3) Where, after the filing of a disclosure statement and before the filing of the next subsequent disclosure statement, a member or the spouse or dependent child of the member,

- (a) acquires a new source of income,
- (b) acquires or disposes of an asset or financial interest referred to in paragraph (2)(b),
- (c) incurs or discharges a liability referred to in paragraph (2)(b), or
- (d) acquires or disposes of an interest in a corporation or partnership referred to in paragraph (2)(c),

the member shall, within 90 days after such occurrence, file with the Clerk a supplemental disclosure statement that contains a report of the acquisition of the new source of income, the

(2) L'état de divulgation fait état :

a) de la provenance et du montant de tout revenu reçu par le député, son conjoint et ses enfants à charge :

- (i) dans le cas d'un état de divulgation déposé en vertu de l'alinéa (1)a), au cours des 12 mois qui ont précédé le dépôt de l'état de divulgation,
- (ii) dans le cas d'un état de divulgation déposé en vertu de l'alinéa (1)b), au cours de la période qui a suivi le dépôt de l'état précédent;

b) de l'actif, du passif et des intérêts financiers du député, de son conjoint et de ses enfants à charge;

c) des intérêts du député, de son conjoint et de ses enfants à charge dans une personne morale ou une société en nom collectif, y compris un état qui fait mention :

- (i) de toute personne morale dont le député, son conjoint et ses enfants à charge ont le contrôle, individuellement ou collectivement,
- (ii) de toute personne morale dont une personne morale visée au sous-alinéa (i) a le contrôle, séparément ou collectivement avec le député, son conjoint et ses enfants à charge, et toute autre personne morale visée au sous-alinéa (i).

(3) Lorsque, après le dépôt de l'état de divulgation et avant le dépôt de l'état de divulgation subséquent, le député, son conjoint ou un enfant à sa charge :

- a) dispose d'une nouvelle source de revenu;
- b) acquiert ou aliène un bien ou un intérêt financier visé à l'alinéa (2)b);
- c) contracte ou acquitte une dette visée à l'alinéa (2)b);
- d) acquiert ou aliène un intérêt dans une personne morale ou une société en nom collectif visée à l'alinéa (2)c),

le député dépose auprès du greffier, dans les 90 jours suivant la réalisation de l'un de ces événements, un état de divulgation supplémentaire précisant la disposition de la nouvelle source de

Contenu de l'état de divulgation

État de divulgation supplémentaire

acquisition or disposition of the asset, financial interest or interest, or of the incurring and discharge of the liability.

revenu, l'acquisition ou l'aliénation du bien, de l'intérêt financier ou de l'intérêt, ou la contraction et l'acquiescement de la dette.

Exception

(4) Notwithstanding subsections (2) and (3), a disclosure statement or supplemental disclosure statement need not contain a report of

- (a) any interest in real property that is primarily for the residential or recreational use of the member or the spouse or a dependent child of the member; and
- (b) an exempt interest within the meaning of subsection 66(3).

(4) Malgré les paragraphes (2) et (3), un état de divulgation ou un état de divulgation supplémentaire peut ne pas faire état :

- a) d'un intérêt dans des biens immeubles à usage essentiellement d'habitation ou de loisir pour le député, son conjoint ou un enfant à charge du député;
- b) d'un intérêt exempté au sens du paragraphe 66(3).

Exception

Confidentiality of disclosure statement and supplemental disclosure statement

(5) A disclosure statement or supplemental disclosure statement is confidential, and subject to section 78 and subsections 82(2) and 85(2), and notwithstanding any other Act, the Clerk

- (a) shall not make a disclosure statement or supplemental disclosure statement filed with the Clerk available for inspection by any person other than the member who filed the statement; and
- (b) shall not reveal the contents of a disclosure statement or supplemental disclosure statement to any person other than the member who filed the statement. R.S.N.W.T. 1988, c.120 (Supp.),s.5; S.N.W.T. 1994,c.31,s.6; S.N.W.T. 1996,c.12,s.6; S.N.W.T. 1996, c.9,Sch.B,s.3.

(5) L'état de divulgation ou l'état de divulgation supplémentaire demeure confidentiel et, sous réserve de l'article 78, des paragraphes 82(2) et 85(2) et malgré toute autre loi, le greffier ne peut :

- a) à l'exclusion du député qui a déposé l'état de divulgation ou l'état de divulgation supplémentaire, mettre à la disposition du public aux fins de consultation l'état de divulgation ou l'état de divulgation supplémentaire déposé auprès du greffier;
- b) révéler le contenu de l'état de divulgation ou l'état de divulgation supplémentaire à une personne autre que le député qui a déposé l'état. L.R.T.N.-O. 1988, ch. 120 (Suppl.), art. 5; L.T.N.-O. 1994, ch. 7, ann; L.T.N.-O. 1994, ch. 31, art. 6; L.T.N.-O. 1996, ch. 12, art. 6; L.T.N.-O. 1996, ch. 9, Ann. B, art. 3.

Confidentialité relative à la divulgation de l'état de divulgation ou l'état de divulgation supplémentaire

Report of failure to file disclosure statement

77.1. (1) The Clerk shall forthwith submit a report to the Conflict of Interest Commissioner in respect of any member who has not filed a disclosure statement within the time permitted in subsection 77(1).

77.1. (1) Le greffier remet sans délai un rapport au commissaire aux conflits d'intérêts relativement à tout député qui n'a pas déposé l'état de divulgation dans le délai prévu au paragraphe 77(1).

Rapport sur le défaut de dépôt de l'état de divulgation

Report of subsequent filing

(2) Where a member files a disclosure statement after the expiry of the time permitted in subsection 77(1), the Clerk shall submit a report to the Conflict of Interest Commissioner indicating the day of filing of the disclosure statement. S.N.W.T. 1994,c.31,s.7; S.N.W.T. 1996,c.9,Sch.B,s.4.

(2) Lorsqu'un député dépose un état de divulgation après le délai prévu au paragraphe 77(1), le greffier remet un rapport au commissaire aux conflits d'intérêts indiquant la date du dépôt de l'état de divulgation. L.T.N.-O. 1994, ch. 31, art. 7; L.T.N.-O. 1996, ch. 9, Ann. B, art. 4.

Rapport sur le dépôt subséquent

Public disclosure statement

78. (1) The Clerk shall prepare a public disclosure statement containing all information provided by a member under sections 72, 76 and 77 except

- (a) the amount of the income of the member or the spouse or dependent children of a member reported under paragraph 77(2)(a);

78. (1) Le greffier établit un état de divulgation public qui fait état de tous les renseignements fournis par le député en vertu des articles 72, 76 et 77, à l'exclusion de ce qui suit :

- a) le montant du revenu du député ou du conjoint ou des enfants à charge du député divulgué en vertu de

État de divulgation public

- (b) the value of the assets, liabilities and financial interests reported under paragraph 77(2)(b); and
- (c) the value of any interest in a corporation or partnership reported under paragraph 77(2)(c).

- l'alinéa 77(2)a);
- b) la valeur de l'actif, du passif et des intérêts financiers divulgués en vertu de l'alinéa 77(2)b);
- c) la valeur de tout intérêt dans une personne morale ou une société en nom collectif divulgué en vertu de l'alinéa 77(2)c).

Supplemental public disclosure statement

(1.1) The Clerk shall, on receiving a supplemental disclosure statement filed under subsection 77(3), prepare a supplemental public disclosure statement containing all information provided by the member except information that would be excluded from a public disclosure statement under subsection (1).

(1.1) Lorsqu'il reçoit un état de divulgation supplémentaire déposé en vertu du paragraphe 77(3), le greffier établit un état de divulgation supplémentaire public contenant tous les renseignements fournis par le député à l'exception des renseignements qui seraient exclus d'un état de divulgation public en vertu du paragraphe (1).

Etat de divulgation supplémentaire public

Register

(2) The Clerk shall prepare a register containing public disclosure statements and supplemental public disclosure statements, and shall

- (a) make that register available for examination by the public; and
- (b) provide a copy of any public disclosure statement or supplemental public disclosure statement to any person on request R.S.N.W.T. 1988,c.120(Supp.), s.5; S.N.W.T. 1996,c.12,s.7.

(2) Le greffier établit un registre dans lequel sont versés les états de divulgation publics et les états de divulgation supplémentaires publics et doit :

- a) rendre le registre accessible au public;
- b) fournir, à toute personne qui en fait la demande, une copie de tout état de divulgation public ou tout état de divulgation supplémentaire public. L.R.T.N.-O. 1988, ch. 120 (Suppl.), art. 5; L.T.N.-O. 1994, ch. 7, ann; L.T.N.-O. 1996, ch. 12, art. 7; L.T.N.-O. 1998, ch. 5, art. 20(2).

Registre

Destruction of disclosure documents

78.1. Six years after a member ceases to be a member, the Clerk shall destroy any disclosure report filed by the former member under section 72 or 76, any disclosure statement or supplemental disclosure statement filed by the former member under section 77 and any public disclosure statement or supplemental public disclosure statement prepared in respect of the former member under section 78, unless the Clerk has knowledge of

- (a) an ongoing proceeding in respect of the former member under this Part; or
- (b) a charge laid against any person under an Act of the Territories or Canada to which the disclosure report, disclosure statement or public disclosure statement may relate. S.N.W.T. 1994,c.31,s.8; S.N.W.T. 1996,c.12,s.8.

78.1. Six ans après que le député a cessé d'exercer ses fonctions à titre de député, le greffier détruit tout rapport de divulgation déposé en vertu de l'article 72 ou 76, tout état de divulgation ou tout état de divulgation supplémentaire déposé par l'ancien député en vertu de l'article 77 et tout état de divulgation public ou tout état de divulgation supplémentaire public établi relativement à l'ancien député en vertu de l'article 78, à moins que le greffier n'ait connaissance :

- a) soit de procédures en cours relativement à l'ancien député en vertu de la présente partie;
- b) soit d'une accusation portée en vertu d'une loi des territoires ou du Canada à l'endroit d'une personne susceptible d'être concernée par le rapport de divulgation, l'état de divulgation ou l'état de divulgation publique. L.T.N.-O. 1994, ch. 31, art. 8; L.T.N.-O. 1996, ch. 12, art. 8.

Destruction des documents de divulgation

CONFLICT OF INTEREST COMMISSIONER

COMMISSAIRE AUX CONFLITS D'INTÉRÊTS

Appointment of Conflict of

79. (1) The Commissioner, on the recommendation

79. (1) Sur la recommandation de l'Assemblée

Nomination du commissaire

Interest
Commissioner of the Legislative Assembly, shall appoint a Conflict
of Interest Commissioner to exercise the powers and
perform the duties set out in this Part.

législative, le commissaire nomme un commissaire aux conflits
aux conflits d'intérêts. Celui-ci exerce les d'intérêts
attributions prévues par la présente partie.

Not in public
service (2) The Conflict of Interest Commissioner may
not be a member of the public service.

(2) Le commissaire aux conflits d'intérêts ne Fonction
peut faire partie de la fonction publique. publique

Term of office	(3) Subject to section 79.01, the Conflict of Interest Commissioner holds office during good behavior for a term of four years.	(3) Sous réserve de l'article 79.01, le commissaire aux conflits d'intérêts occupe sa charge pour un mandat de quatre ans à titre inamovible.	Durée du mandat
Continuation after expiry of term	(4) A person holding office as Conflict of Interest Commissioner continues to hold office after the expiry of his or her term of office until he or she is reappointed, a successor is appointed or a period of six months has expired, whichever first occurs. R.S.N.W.T. 1988,c.120(Supp.),s.5; S.N.W.T. 1994, c.31,s.10; S.N.W.T. 1996,c.9,Sch.B,s.5.	(4) Le commissaire aux conflits d'intérêts continue d'occuper sa charge après l'expiration de son mandat jusqu'à ce qu'il reçoive un nouveau mandat, qu'un successeur lui soit nommé ou qu'une période de six mois se soit écoulée, selon l'événement qui se produit le premier. L.R.T.N.-O. 1988, ch. 120 (Suppl.), art. 5; L.T.N.-O. 1994, ch. 31, art. 10; L.T.N.-O. 1996, ch. 9, Ann. B, art. 5.	Occupation de la charge après l'expiration du mandat
Resignation	79.01. (1) The Conflict of Interest Commissioner may resign at any time by notifying the Speaker in writing or, if there is no Speaker or the Speaker is absent from the Territories, by so notifying the Clerk.	79.01. (1) Le commissaire aux conflits d'intérêts peut démissionner en tout temps en avisant par écrit le président de l'Assemblée législative ou, s'il n'y a pas de président ou que celui-ci est absent des territoires, en avisant par écrit le greffier de l'Assemblée législative.	Démission
Removal for cause	(2) The Commissioner, on the recommendation of the Legislative Assembly, shall, for cause or incapacity, remove the Conflict of Interest Commissioner from office or suspend the Conflict of Interest Commissioner.	(2) Le commissaire, sur la recommandation de l'Assemblée législative, destitue ou suspend le commissaire aux conflits d'intérêts pour un motif valable ou en raison de son empêchement.	Destitution pour un motif valable
Suspension	(3) If the Legislative Assembly is not sitting, the Commissioner, on the recommendation of the Management and Services Board, may suspend the Conflict of Interest Commissioner for cause or incapacity.	(3) Si l'Assemblée législative ne siège pas, le commissaire peut, sur la recommandation du Bureau de régie et des services, suspendre le commissaire aux conflits d'intérêts pour un motif valable ou en raison de son empêchement.	Suspension
Acting Conflict of Interest Commissioner	(4) The Commissioner, on the recommendation of the Management and Services Board, may appoint an acting Conflict of Interest Commissioner where	(4) Sur la recommandation du Bureau de régie et des services, le commissaire peut nommer un commissaire aux conflits d'intérêts intérimaire dans les cas suivants :	Commissaire aux conflits d'intérêts intérimaire
	(a) the Conflict of Interest Commissioner is temporarily unable to act because of illness or for another reason;	a) en cas d'empêchement temporaire du commissaire aux conflits d'intérêts pour cause de maladie ou pour toute autre cause;	
	(b) the office of Conflict of Interest Commissioner becomes vacant when the Legislative Assembly is not sitting;	b) lorsque la charge de commissaire aux conflits d'intérêts devient vacante à un moment où l'Assemblée législative ne siège pas;	
	(c) the Conflict of Interest Commissioner is suspended when the Legislative Assembly is not sitting; or	c) lorsque le commissaire aux conflits d'intérêts est suspendu à un moment où l'Assemblée législative ne siège pas;	
	(d) the Conflict of Interest Commissioner is removed or suspended or the office of the Conflict of Interest Commissioner becomes vacant when the Legislative Assembly is sitting, but no recommendation is made by the Legislative Assembly under subsection 79(1) before the end of the session.	d) lorsque le commissaire aux conflits d'intérêts est destitué ou suspendu ou que sa charge devient vacante à un moment où l'Assemblée législative siège mais que celle-ci n'a fait aucune recommandation en vertu du paragraphe 79(1) avant la fin de la session.	

Term of acting Conflict of Interest Commissioner	(5) An acting Conflict of Interest Commissioner holds office until	(5) Le commissaire aux conflits d'intérêts intérimaire occupe son poste jusqu'au moment, selon le cas :	Durée du mandat du commissaire aux conflits d'intérêts intérimaire
	<ul style="list-style-type: none"> (a) a person is appointed under subsection 79(1), (b) the suspension of the Conflict of Interest Commissioner ends, or (c) the Conflict of Interest Commissioner returns to office after a temporary absence, whichever is the case. S.N.W.T. 1996,c.9,Sch.B,s.5.	<ul style="list-style-type: none"> a) de la nomination d'une personne en vertu du paragraphe 79(1); b) de la fin de la suspension du commissaire aux conflits d'intérêts; c) du retour du commissaire aux conflits d'intérêts après une absence temporaire. L.T.N.-O. 1996, ch. 9, Ann. B, art. 5. 	
Oath	79.02. Before undertaking the duties of office, the Conflict of Interest Commissioner shall take an oath, before either the Speaker or Clerk, to faithfully and impartially perform the duties of the office and not to disclose any information received by the Conflict of Interest Commissioner under this Part except in accordance with this Part. S.N.W.T. 1996,c.9,Sch.B, s.5.	79.02. Préalablement à son entrée en fonctions, le commissaire aux conflits d'intérêts prête serment, devant le président ou le greffier de l'Assemblée législative, de fidélité et d'impartialité dans l'exercice des devoirs de sa charge et de secret en ce qui concerne les renseignements reçus par le commissaire aux conflits d'intérêts dans le cadre de la présente partie, sous réserve des autres dispositions de celle-ci. L.T.N.-O. 1996, ch. 9, Ann. B, art. 5.	Serment
Liability	79.03. The Conflict of Interest Commissioner is not liable for loss or damage caused by anything done or not done in good faith in the performance of the duties or in the exercise of the powers of the Conflict of Interest Commissioner. S.N.W.T. 1996, c.9,Sch.B,s.5.	79.03. Le commissaire aux conflits d'intérêt bénéficie de l'immunité pour les actes accomplis ou les omissions commises de bonne foi dans l'exercice de ses attributions. L.T.N.-O. 1996, ch. 9, Ann. B, art. 5.	Immunité
Extension of time	79.1. Where a provision of this Part requires a member to do anything within a specified period of time, the Conflict of Interest Commissioner may, on the written request of the member, extend the time so provided by such additional number of days as the Conflict of Interest Commissioner considers to be reasonable in the circumstances. S.N.W.T. 1994,c.31,s.11; S.N.W.T. 1996,c.9,Sch.B.s.6.	79.1. Lorsqu'une disposition de la présente partie prévoit un délai déterminé pour l'accomplissement d'un acte par le député, le commissaire aux conflits d'intérêts peut, sur demande écrite du député, prolonger ce délai d'autant de jours que le commissaire aux conflits d'intérêts estime raisonnables dans les circonstances. L.T.N.-O. 1994, ch. 31, art. 11; L.T.N.-O. 1996, ch. 9, Ann. B, art. 6.	Prolongation
Request for advice	79.2. (1) A member may request the Conflict of Interest Commissioner to give written advice and recommendations on any matter respecting obligations of the member under this Part.	79.2. (1) Le député peut demander au commissaire aux conflits d'intérêts qu'il lui fournisse des recommandations et conseils écrits sur toute question ayant trait aux obligations du député en vertu de la présente partie.	Demande de conseils
Statement of material facts	(2) A member who makes a request under subsection (1) shall provide the Conflict of Interest Commissioner with a written statement of the material facts relevant to the request, and shall provide such further information as the Conflict of Interest Commissioner may request.	(2) Le député qui fait une demande en vertu du paragraphe (1) fournit au commissaire aux conflits d'intérêts une déclaration écrite énonçant les faits importants pertinents à la demande et fournit au commissaire tout autre renseignement que ce dernier peut exiger.	Déclaration des faits importants
Inquiries	(3) The Conflict of Interest Commissioner may make such inquiries as he or she considers appropriate in order to provide the member with	(3) Le commissaire aux conflits d'intérêts procède à des enquêtes lorsqu'il estime qu'il y a lieu de procéder ainsi afin de fournir des conseils et	Enquêtes

advice and recommendations.

recommandations au député.

Confidentiality

(4) Information provided by a member under subsection (2) and any advice and recommendations of the Conflict of Interest Commissioner are confidential, but may be disclosed by the member or with the written consent of the member.

(4) Les renseignements fournis par un député en vertu du paragraphe (2) et les conseils et recommandations du commissaire aux conflits d'intérêts demeurent confidentiels; cependant, le député peut les divulguer ou consentir par écrit à leur divulgation.

Confidentialité

Compliance with advice and recommendations

(5) Where a member has, under this section, received the advice and recommendations of the Conflict of Interest Commissioner with respect to obligations of the member under this Part, no proceeding or prosecution shall be taken against the member under this Part in respect of those obligations where the member has

(5) Il ne peut être intentées de poursuites ou de procédures contre le député qui, en vertu du présent article, a reçu des conseils et recommandations du commissaire aux conflits d'intérêts relativement aux obligations prévues à la présente partie au sujet desquelles le député :

Respect des conseils et recommandations

- (a) communicated the material facts to the Conflict of Interest Commissioner; and
- (b) complied with any recommendations contained in the advice and recommendations of the Conflict of Interest Commissioner. S.N.W.T. 1994,c.31,s.11; S.N.W.T. 1996,c.9, Sch.B,s.7.

- a) a fait part des faits importants au commissaire aux conflits d'intérêts;
- b) s'est conformé aux recommandations contenues dans les conseils et recommandations du commissaire aux conflits d'intérêts. L.T.N.-O. 1994, ch. 31, art. 11; L.T.N.-O. 1996, ch. 9, Ann. B, art. 7.

Annual report

79.3. (1) During each year, the Conflict of Interest Commissioner shall submit to the Speaker an annual report consisting of

79.3. (1) Chaque année, le commissaire aux conflits d'intérêts remet au président un rapport annuel comprenant :

Rapport annuel

- (a) a statement identifying any member who has
 - (i) filed a disclosure statement or supplemental disclosure statement more than 45 days after the expiry of the time permitted for such filing in section 77 or, where an extension of time has been obtained under section 79.1, more than 45 days after the expiry of such extended period of time, or
 - (ii) failed to file a disclosure statement or supplemental disclosure statement before the annual report is submitted to the Speaker where the annual report is submitted to the Speaker more than 45 days after the expiry of the time permitted for such filing in section 77 or, where an extension of time has been obtained under section 79.1, more than 45 days after the expiry of such extended period of time;
- (b) a statement
 - (i) identifying any member or former member who is authorized to

- a) une déclaration identifiant tout député qui, selon le cas :
 - (i) a déposé un état de divulgation ou un état de divulgation supplémentaire soit plus de 45 jours après l'expiration du délai prévu à l'article 77 pour un tel dépôt, soit plus de 45 jours après l'expiration de la prolongation de délai accordée en vertu de l'article 79.1,
 - (ii) a fait défaut de déposer un état de divulgation ou un état de divulgation supplémentaire soit avant la remise du rapport annuel au président, lorsque le rapport annuel est remis au président, soit plus de 45 jours après l'expiration du délai prévu à l'article 77 pour un tel dépôt, soit plus de 45 jours après l'expiration de la prolongation de délai accordée en vertu de l'article 79.1;
- b) une déclaration :
 - (i) identifiant tout député ou ancien député qui a reçu

accept a contract by the Conflict of Interest Commissioner under subsection 75.1(3), and

- (ii) describing the nature of the contract and indicating any conditions imposed by the Conflict of Interest Commissioner under subsection 75.1(3);
- (c) a statement identifying any member who obtains an extension of time under section 79.1 and indicating the requirement in respect of which the extension has been given; and
- (d) a general summary of the activities of the Conflict of Interest Commissioner during the preceding year.

Report of late filing or non-filing of disclosure statement

(2) Notwithstanding paragraph (1)(a), the Conflict of Interest Commissioner may, at any time, submit to the Speaker a report identifying a member who has

- (a) filed a disclosure statement or supplemental disclosure statement more than 45 days after the expiry of the time permitted for such filing in section 77 or, where an extension of time has been obtained under section 79.1, more than 45 days after the expiry of such extended period of time; or
- (b) failed to file a disclosure statement or supplemental disclosure statement before the report is submitted to the Speaker where the report is submitted to the Speaker more than 45 days after the expiry of the time permitted for such filing in section 77 or, where an extension of time has been obtained under section 79.1, more than 45 days after the expiry of such extended period of time.

Tabling of report

(3) The Speaker shall cause a report received under subsection (1) or (2) to be laid before the Legislative Assembly as soon as is reasonably practicable. S.N.W.T. 1994,c.31,s.11; S.N.W.T. 1996,c.12,s.9; S.N.W.T. 1996,c.9,Sch.B,s.8.

ENFORCEMENT
S.N.W.T. 1994,c.31,s.12

Complaint

80. (1) Any person who believes on reasonable grounds that a member has contravened any provision of this Part may file a written complaint with the Clerk.

l'autorisation du commissaire aux conflits d'intérêts d'accepter un contrat en vertu du paragraphe 75.1(3),

- (ii) précisant la nature du contrat et les conditions fixées par le commissaire aux conflits d'intérêts en vertu du paragraphe 75.1(3);
- c) une déclaration identifiant tout député ayant obtenu une prolongation de délai en vertu de l'article 79.1 et les conditions rattachées à cette prolongation;
- d) un sommaire général des activités du commissaire aux conflits d'intérêts pendant l'année précédente.

(2) Malgré l'alinéa (1)a), le commissaire aux conflits d'intérêts peut, en tout temps, remettre au président un rapport identifiant tout député qui, selon le cas :

- a) a déposé un état de divulgation ou un état de divulgation supplémentaire soit plus de 45 jours après l'expiration du délai prévu à l'article 77 pour un tel dépôt, soit plus de 45 jours après l'expiration de la prolongation de délai accordée en vertu de l'article 79.1;
- b) a fait défaut de déposer un état de divulgation ou un état de divulgation supplémentaire soit avant la remise du rapport annuel au président, lorsque le rapport annuel est remis au président, soit plus de 45 jours après l'expiration du délai prévu à l'article 77 pour un tel dépôt, soit plus de 45 jours après l'expiration de la prolongation de délai accordée en vertu de l'article 79.1.

Rapport sur le dépôt tardif ou l'absence de dépôt de l'état de divulgation

(3) Le président s'assure que le rapport reçu en vertu du paragraphe (1) ou (2) est déposé devant l'Assemblée législative aussitôt que possible. L.T.N.-O. 1994, ch. 31, art. 11; L.T.N.-O. 1996, ch. 12, art. 9; L.T.N.-O. 1996, ch. 9, Ann. B, art. 8.

APPLICATION
L.T.N.-O. 1994, ch. 31, art. 12

Dépôt du rapport

80. (1) Quiconque a des motifs raisonnables de croire qu'un député a enfreint une disposition de la présente partie peut déposer auprès du greffier une plainte écrite.

Plainte

Forwarding
of complaint
by Clerk

(2) The Clerk shall provide a copy of the complaint to the member complained of and the Conflict of Interest Commissioner. R.S.N.W.T. 1988, c. 120 (Supp.), s. 5; S.N.W.T. 1996, c. 9, Sch. B, s. 9.

(2) Le greffier fournit une copie de la plainte au député concerné et au commissaire aux conflits d'intérêts. L.R.T.N.-O. 1988, ch. 120 (Suppl.), art 5; L.T.N.-O. 1996, ch. 9, Ann. B, art. 9. Acheminemen
t
de la plainte

Inquiry	81. (1) The Conflict of Interest Commissioner shall, after giving reasonable notice to the member complained of and the complainant, conduct an inquiry into the complaint.	81. (1) Le commissaire aux conflits d'intérêts doit, après avoir donné un avis suffisant au député concerné et au plaignant, mener une enquête relativement à la plainte.	Enquête
Refusal to conduct inquiry	(2) Notwithstanding subsection (1), the Conflict of Interest Commissioner may decline to conduct an inquiry into a complaint where he or she determines that (a) the complaint is frivolous or vexatious or was not made in good faith; or (b) there are insufficient grounds to warrant an inquiry.	(2) Malgré le paragraphe (1), le commissaire aux conflits d'intérêts peut refuser de mener une enquête relativement à la plainte lorsqu'il estime : a) que la plainte est frivole ou vexatoire ou qu'elle n'a pas été déposée de bonne foi; b) qu'il n'y a pas de motifs suffisants pour justifier une enquête.	Refus de mener une enquête
Report to Speaker	(3) Where the Conflict of Interest Commissioner declines to conduct an inquiry under subsection (2), he or she shall provide a report to the Speaker.	(3) Lorsque le commissaire aux conflits d'intérêts refuse de mener une enquête en vertu du paragraphe (2), il fournit un rapport au président de l'Assemblée législative.	Rapport au président
Tabling of report	(4) The Speaker shall cause a report received under subsection (3) to be laid before the Legislative Assembly as soon as is reasonably practicable. R.S.N.W.T. 1988,c.120(Supp.),s.5; S.N.W.T. 1996, c.12,s.10; S.N.W.T. 1996,c.9,Sch.B,s.10.	(4) Le président s'assure que le rapport reçu en vertu du paragraphe (3) est déposé devant l'Assemblée législative aussitôt que possible. L.R.T.N.-O. 1988, ch. 120 (Suppl.), art. 5; L.T.N.-O. 1996, ch. 12, art. 10; L.T.N.-O. 1996, ch. 9, Ann. B, art. 10.	Dépôt du rapport
Hearing in public	82. (1) Any hearing in an inquiry shall be conducted in public unless the Conflict of Interest Commissioner considers that it is necessary in the public interest to conduct the hearing <i>in camera</i> .	82. (1) Toute audience lors d'une enquête est publique à moins que le commissaire aux conflits d'intérêts ne soit d'avis qu'il est préférable, dans l'intérêt public, de tenir l'audience à huis clos.	Audiences publiques
Powers of Conflict of Interest Commissioner	(2) In the conduct of an inquiry, the Conflict of Interest Commissioner (a) may require the Clerk to produce a disclosure statement or a supplemental disclosure statement received by the Clerk under section 77; (b) has the powers of a Board under the <i>Public Inquiries Act</i> , including the power to engage the services of counsel, experts and other persons referred to in section 10 of that Act; and (c) is not subject to technical rules of evidence.	(2) Lors de la tenue d'une enquête, le commissaire aux conflits d'intérêts : a) peut ordonner au greffier de produire l'état de divulgation ou l'état de divulgation supplémentaire reçu par le greffier en vertu de l'article 77; b) a les pouvoirs d'une commission en vertu de la <i>Loi sur les enquêtes publiques</i> , y compris celui de retenir les services d'avocats, d'experts et de toute autre personne visée à l'article 10 de cette loi; c) n'est pas assujéti aux règles techniques de preuve.	Pouvoirs du commissaire aux conflits d'intérêts
Evidence of member	(3) The member complained of may not refuse to give evidence at the inquiry.	(3) Le député concerné ne peut refuser lors de l'audience de fournir des éléments de preuve.	Preuve du député
Natural justice	(4) The Conflict of Interest Commissioner shall conduct an inquiry in accordance with the principles of natural justice. R.S.N.W.T. 1988,c.120(Supp.),s.5; S.N.W.T. 1996,c.12,s.11; S.N.W.T. 1996,c.9,Sch.B, s.10.	(4) Le commissaire aux conflits d'intérêts mène l'enquête en conformité avec les principes de justice naturelle. L.R.T.N.-O. 1988, ch. 120 (Suppl.), art. 5; L.T.N.-O. 1996, ch. 12, art. 11; L.T.N.-O. 1996, ch. 9, Ann. B, art. 10.	Justice naturelle

Disposition of
complaint by
Commission
of Inquiry

83. (1) After conducting an inquiry, the Conflict of Interest Commissioner shall, in a report submitted to the Speaker, advise that

- (a) the complaint is dismissed, where the Conflict of Interest Commissioner has determined
 - (i) that the complaint does not disclose a contravention of this Part,
 - (ii) that a contravention of this Part was trivial or was committed through inadvertence or by reason of an error of judgment made in good faith, or
 - (iii) that the member took all reasonable measures to prevent a contravention of this Part; or
- (b) the Conflict of Interest Commissioner has found the member to be guilty of contravening a provision of this Part, and is recommending to the Legislative Assembly that one or more of the following punishments be imposed on the member:
 - (i) a reprimand,
 - (ii) a fine in an amount not exceeding \$10,000 established by the Conflict of Interest Commissioner,
 - (iii) an order requiring the member to make restitution, in an amount determined by the Conflict of Interest Commissioner, to the Government of the Northwest Territories or to an agency or corporation of the Government of the Northwest Territories of any gain realized by the member or the spouse or a dependent child of the member by participating in a transaction in contravention of a provision of this Part,
 - (iv) an order requiring the member to pay compensation to any person for a loss suffered by that person as a result of the member or the spouse or a dependent child of the member participating in a transaction in contravention of a provision of this Part,
 - (v) a suspension for a period not exceeding 30 sitting days of the privileges of the member to sit in the Legislative Assembly,
 - (vi) a declaration that the seat of the member is vacant,

83. (1) Après avoir mené une enquête, le commissaire aux conflits d'intérêts fait rapport au président et, selon le cas :

- a) propose que la plainte soit rejetée, lorsque le commissaire aux conflits d'intérêts détermine :
 - (i) que la plainte ne démontre pas une contravention à la présente partie,
 - (ii) que la contravention à la présente partie est frivole ou a été perpétrée par inadvertance ou à la suite d'une erreur de jugement commise de bonne foi,
 - (iii) que le député a pris toutes les mesures nécessaires afin d'éviter une contravention à la présente partie;
- b) établit que le commissaire aux conflits d'intérêts a trouvé le député coupable d'avoir enfreint une disposition de la présente partie et recommande à l'Assemblée législative d'imposer une ou plusieurs des sanctions suivantes :
 - (i) blâme,
 - (ii) amende maximale de 10 000 \$ dont il fixe le montant,
 - (iii) ordonnance qui réclame que le député restitue un montant fixé par le commissaire aux conflits d'intérêts, représentant les bénéfices réalisés par le député, son conjoint ou un enfant à charge du député qui a pris part à une opération en contravention à une disposition de la présente partie, en faveur du gouvernement des Territoires du Nord-Ouest, d'un organisme ou d'une société du gouvernement des Territoires du Nord-Ouest,
 - (iv) ordonnance qui prévoit le versement d'une compensation par le député pour une perte subie par un tiers du fait de la participation du député, de son conjoint ou d'un enfant à charge du député, à une opération en contravention à une disposition de la présente

Règlement de
la plainte par
la commis-
sion d'enquête

(vii) an order that the member pay costs in an amount determined by the Conflict of Interest Commissioner.

- partie.
- (v) suspension du privilège du député de siéger à l'Assemblée législative pour une période maximale de 30 jours de séance,
 - (vi) déclaration à l'effet que le siège du député est vacant,
 - (vii) ordonnance qui prévoit que le député devra défrayer les coûts dont le montant est fixé par le commissaire aux conflits d'intérêts.

Reasons	(2) A report referred to in subsection (1) shall provide reasons.	(2) Le rapport au paragraphe (1) doit être motivé.	Motifs
Tabling of report	(3) The Speaker shall cause a report received under subsection (1) to be laid before the Legislative Assembly as soon as is reasonably practicable. R.S.N.W.T. 1988, c.120(Supp.), s.5; S.N.W.T. 1996, c.9, Sch.B, s.11.	(3) Le président s'assure que le rapport reçu en vertu du paragraphe (1) est déposé devant l'Assemblée législative aussitôt que possible. L.R.T.N.-O. 1988, ch. 120 (Suppl.), art. 5; L.T.N.-O. 1996, ch. 9, Ann. B, art. 11.	Dépôt du rapport
Consideration of report by Legislative Assembly	84. (1) The Legislative Assembly shall consider a report provided by the Conflict of Interest Commissioner under paragraph 83(1)(b) within 30 sitting days after the report is laid before the Legislative Assembly.	84. (1) Dans les 30 premiers jours de séance à compter de la date où le rapport du commissaire aux conflits d'intérêts est déposé devant l'Assemblée législative en vertu de l'alinéa 83(1)b), celle-ci l'étudie.	Étude du rapport par l'Assemblée législative
Disposition by Legislative Assembly	(2) The Legislative Assembly may order the imposition of the punishment recommended by the Conflict of Interest Commissioner, or it may reject the recommendation. R.S.N.W.T. 1988, c.120(Supp.), s.5; S.N.W.T. 1996, c.9, Sch.B, s.12.	(2) L'Assemblée législative peut ordonner l'imposition des sanctions que recommande le commissaire aux conflits d'intérêts ou rejeter ces recommandations. L.R.T.N.-O. 1988, ch. 120 (Suppl.), art. 5; L.T.N.-O. 1996, ch. 9, Ann. B, art. 12.	Règlement de la plainte par l'Assemblée législative

MISCELLANEOUS

DIVERS

Confidentiality	85. (1) Subject to the provisions of this Part, the Clerk, the officers of the Legislative Assembly, the Conflict of Interest Commissioner and each person employed or engaged in the Office of the Legislative Assembly or by the Conflict of Interest Commissioner shall maintain the confidentiality of any confidential information received in the course of the administration of this Part.	85. (1) Sous réserve des dispositions de la présente partie, le greffier, les agents de l'Assemblée législative, le commissaire aux conflits d'intérêts et toute personne à l'emploi ou au service du Bureau de l'Assemblée législative ou du commissaire aux conflits d'intérêts doivent protéger le caractère confidentiel de tout renseignement confidentiel obtenu dans le cadre de l'administration de la présente partie.	Confidentialité
Exceptions	(2) Information to which subsection (1) applies may be disclosed <ul style="list-style-type: none"> (a) to a member who is the subject of proceedings under this Part; (b) for the purposes of an inquiry under this Part; and (c) in a criminal proceeding, as required by 	(2) Les renseignements visés au paragraphe (1) peuvent être divulgués : <ul style="list-style-type: none"> a) à un député qui fait l'objet de procédures en vertu de la présente partie; b) aux fins d'une enquête en vertu de la présente partie; 	Exceptions

l a w . R . S . N . W . T .
1988, c. 120 (Suppl.), s. 5;
S.N.W.T.1994, c. 31, s. 13; S.N.W.T.
1996, c. 9, Sch. B, s. 13.

c) en cas d'une procédure criminelle, tel
qu'exigé par la loi. L.R.T.N.-O. 1988,
ch. 120 (Suppl.), art. 5; L.T.N.-O.
1994, ch. 31, art. 13; L.T.N.-O. 1996,
ch. 9, Ann. B, art. 13.

Authority of
Premier

86. Nothing in this Part shall be construed so as to limit the authority of the Premier to require that Ministers comply with such additional restrictions and obligations respecting conflict of interest as may be established by directive of the Premier. R.S.N.W.T. 1988, c.120(Suppl.),s.5; S.N.W.T 1994, c.30,s.1.

86. La présente partie n'a pas pour effet de limiter le pouvoir du premier ministre d'exiger que les ministres se soumettent à des restrictions et obligations supplémentaires relativement aux conflits d'intérêts, prévues par directives du premier ministre. L.R.T.N.-O. 1988, ch. 120 (Suppl.), art. 5; L.T.N.-O. 1994, ch. 30, art. 1.

Pouvoir du
premier
ministre

Proper
exercise of
functions of
members

87. Nothing in this Part shall be construed so as to prevent or impede the proper exercise of a member's functions as a member of the Legislative Assembly, including the ordinary and proper representation of members of the public. S.N.W.T. 1994,c.31,s.14.

87. La présente partie n'a pas pour effet d'empêcher ou d'entraver le député dans l'exercice légitime de ses fonctions en tant que député de l'Assemblée législative, y compris la représentation normale et efficace des membres du public. L.T.N.-O. 1994, ch. 31, art. 14.

Exercice
légitime
des fonctions
de député

Appendix "E"
Lahm Ridge Tower Lease Renewal Terms

RANKIN TERMS

Renewal for one five year term

Base rent the same (except reductions noted below). Operating costs will still be paid as "additional rent"

Operating costs to be reduced by \$42,000/yr. from 1994 rates

Replace HVAC system - at a cost of \$125,000

After Jan 1, 1999, on six months notice, Government can reduce lease space in blocks of 5,000sq. ft. but must pay a penalty of 3 months rent including utilities on vacating.

Base rent reduced by \$1,200 per month for parking stalls

Basement space rent reduced by \$1.00 per square footxxx/yr

NEW TERMS

Renewal for the remainder of the term - 8 yrs 2 mo

Base rent the same. Operating costs will still be paid as "additional rent"

Operating costs to be reduced by \$60,000 /year

Upgrade the HVAC system

SUMMARY OF
REASONS AND CONCLUSIONS

RECOMMENDATIONS

APPENDIX "F"

**IN THE MATTER OF A COMPLAINT UNDER PART III OF THE
LEGISLATIVE ASSEMBLY AND EXECUTIVE COUNCIL ACT BY
THE MEMBER FOR HAY RIVER IN RELATION TO THE MEMBER
FROM TU NEDHE**

SUMMARY OF ISSUES AND CONCLUSIONS

Bison Herd

Did Premier Morin have any private interest in relation to the decision to transfer the bison herd from Ft. Smith to Ft. Resolution and if so, did Premier Morin as a Minister or a Member declare conflicts and refrain from participating in debate or voting or to refrain from influencing others and arrange for alternate Ministers to perform duties in relation to that interest?

*Relevant Sections of the Legislative Assembly and Executive Council Act, (the "Act"):
69(1) and 69(3)*

Premier Morin had no private interest in this transaction. He was not obliged to refrain from participating or voting.

There is no violation.

Did Premier Morin act improperly in facilitating the business relationship between the Deninu K'ue First Nation and Mr. Mrdjenovich or between the two and the Government of the NWT in their activities in relation to the bison herd?

Relevant Section 67(a)

Premier Morin acted properly in advancing his constituents' interests in obtaining the bison herd by introducing the parties and promoting the project.

There is no violation.

The House

Is Premier Morin's occupancy of the house at 43 Otto Drive a significant private interest and do the circumstances of that occupancy constitute a direct or indirect benefit to Premier Morin or his family which arises as a consequence of his office?

Relevant section 66(1)

Both the level of rent paid on the house and the fact that it was built to the Morins' specifications result in a benefit to Premier Morin. The most significant reason Premier Morin received this benefit is because he is Premier. This benefit creates a conflict of interest.

There is a violation.

In relation to the house, did Premier Morin comply with his obligation to refrain from accepting any remuneration or benefit, the acceptance of which might erode public confidence and trust in the integrity, objectivity and impartiality of the member?

Relevant section 67(b)

By accepting this benefit and living the house in these circumstances Premier Morin failed to meet his obligations under the *Act*. This breach is likely to erode public confidence in the integrity of the member.

There is a violation.

Lahm Ridge Tower

Did Premier Morin have a role, direct or indirect, in the decision to extend the Lahm Ridge Tower lease? Did he act in a manner to maintain public confidence and trust in his integrity and impartiality?

Relevant section: s. 67(a)

The evidence does not permit the Commissioner to be "*quite satisfied*" that Premier Morin participated in the decision of the Government of the Northwest Territories to extend the lease on Lahm Ridge Tower ("LRT"). As a consequence, a violation has not been proven.

Premier Morin's situation was compromised by having accepted a benefit in his housing (above) and by the circumstances of his relationship with Roland Bailey (below). The LRT transaction is riddled with lies, inconsistencies and incredible coincidences, some of which became apparent only through this Inquiry process while others were already on the public record and available to Premier Morin.

Premier Morin's use of his office persistently to defend a transaction involving individuals with whom he was already in a conflict situation which resulted in a failure to maintain public confidence in his impartiality and integrity.

It would not have effected his ability to serve his constituents or his office as Premier to have stepped aside and allow others in Cabinet to take up this debate.

There is a violation.

Did Premier Morin have a private interest which affected the performance of any public duties in relation to the Lahm Ridge Tower Lease renewal, including the subsequent defense of the renewal decision? If so, did he act in a manner to maintain public confidence and trust in his integrity and impartiality?

Relevant sections: s. 66(1) and 67(a)

Post-employment relationship with Roland Bailey

Was there any direct political interference by Premier Morin in the awarding of the Aurora Funds and Petroleum Products Division contracts and extending the lease on Lahm Ridge Towers?

Relevant section: 68(2)

Premier Morin did not influence the awarding of the contracts with the Aurora Funds or with the Petroleum Products Division. As discussed above, there is not sufficient proof with respect to his involvement in the Lahm Ridge Towers lease to make any finding against him.

Each of the Aurora Fund contracts, the Petroleum Products Development Contract and the Lahm Ridge Tower renewal was a violation of the post-employment provisions.

There is no violation.

What were Premier Morin's public duties with respect to enforcement of the post-employment policies affecting Deputy Ministers?

Since responsibility for the post-employment policy was properly allocated to a responsible Minister, Premier Morin had no direct obligation under the *Act* to ensure it was enforced. This is not a policy inquiry or a ruling on political accountability generally. It was not among the public duties of the Premier to enforce the post-employment terms of Roland Bailey in the year after his employment in government ended.

In his relationship with Roland Bailey, did the Member perform his duties of office and arrange his private affairs in a manner to maintain public confidence in his impartiality?

Relevant section: s. 67(a)

There is a basis for a reasonable person to doubt the impartiality and integrity of the Premier in the manner in which he performed his public duties and arranged his private affairs in several aspects of respect of his relationship with Roland Bailey.

There is no limit in the conflicts legislation dictating the people with whom a member can be friends, nor defining acceptable relationships for his senior staff. But given that no steps were being taken by his government to enforce Mr. Bailey's post-employment obligations, the Premier's socializing and travelling with Mr. Bailey creates an appearance of potential favouritism or partiality. This perception problem is reinforced by the role of Mr. Bailey's apartment mate and good friend as the Premier's most senior political advisor in the absence of clear and accessible guidelines to identify possible conflicts that might arise out of that relationship.

There is a violation.

Nova Contracts

Has the Member used his office to seek to influence decisions of other persons in the Department of Public Works or the Northwest Territories Housing Corporation which relate to Nova Construction (1987) Ltd. or Nova Construction (1994) Ltd., under circumstances where the Member had a relevant private interest?

Relevant Section: s. 68(2)

The member has not used his office to influence the awarding of contracts to Nova Construction. The premier, since living at 33 Otto Drive has had a relevant private interest, which has fuelled speculation and rumour in an industry and under circumstances susceptible to such rumour. A reasonably well-informed person could separate the rumour from the reality.

There is no violation.

Fort Resolution Land

Was Premier Morin entitled to sell his land to the Deninu K'ue Development Corporation on the agreed terms, for the construction of the Ft. Resolution office complex project or was there an element of benefit in the transaction which arose, or would have appeared to an ordinary but well informed constituent to have arisen, because of his office?

Relevant section 67(b)

Premier Morin was entitled to sell his land on the agreed terms. The benefits did not arise as a result of his office.

There is no violation.

Did Premier Morin use his office or allow it to be used to advance the Ft Resolution office complex project after it became apparent that his lands might be involved?

Relevant section 68(2)

Premier Morin failed to prevent his office from intervening with both the Department of Public Works and the Business Credit Corporation to advance the project after his lands involved

The Act was violated.

Did Premier Morin have a private interest in relation to the Ft. Resolution Office Complex which required him as a Minister or a Member to declare conflicts and refrain from participating in debate or voting or to refrain from influencing others and arrange for alternate Ministers to perform duties? If so, did he meet that standard?

Relevant sections: 69(1) and 69(3)

Premier Morin failed to meet the standard set in the *Act* to declare conflicts. A declaration no one hears is not a declaration.

The Act was violated.

Did Premier Morin use his office or allow it to be used to advance the interests of Nova Construction as contractors on this project while or having received a benefit from that corporation or related individuals?

Relevant section 67(c)

There is no evidence to support this allegation.

Other items

Did Premier Morin's fishing trip with Roland Bailey in the spring of 1997 constitute acceptance of a benefit? Was it connected, directly or indirectly, with the performance of duties of office? Could it erode public confidence and trust in the integrity, objectivity or impartiality of the Member?

Section 67(b); Section 76(1)

The fishing trip was a benefit. It was not trivial. It could erode public confidence in the Premier's impartiality and integrity.

The Act was violated.

Was Morin honest and thorough in the materials and information he presented on this project to Commissioner Fournier, to the Clerk of the Legislative Assembly for filing as part of his disclosure statement and to this Inquiry in relation to the 81(2) process, in particular documents 246 (the statement signed by Todd, Arlooktoo, Dent and Ng) and documents 3576-3578 (the filing letter and statement obtained from the Band) and document 248-249 (the letter sent to Fournier by Avison on Morin's instructions)?

Relevant section 67(a)

Three documents in this process were generated by or for the Premier and used by him to extract himself from perceived conflicts. These three were:

- The document signed by Cabinet members stating the Premier had made a declaration of conflict (doc. 246).
- The letter filed with the Clerk regarding his Supplementary statement (doc. 3576).
- The certificate of Andrew Butler for the Deninu K'ue First Nation (doc. 3578).

Use of misleading documents compromises the Premier's integrity.

The Act was violated.

Was Premier Morin's support for Milan Mr. Mrdjenovich's relative's application for a visitor's visa a breach of his duty not to use his office to influence a decision made by another person to further private interest?

Relevant section: 68(2)

Given the existing conflict with the house, the visa request creates a technical conflict of interest. The contravention of the Act was trivial and made in good faith.

There is no contravention.

Recommendations

The Act requires that I make a recommendation to the Assembly of the appropriate penalty. I have heard the presentations made by Mr. Morin's lawyer, and those who want to read them can look at the transcripts which will accompany this report.

I am not prepared to read the possible punishments set in out in the Act as being written from worst to best. There are times when a fine would be the best answer. I would impose a fine in a case where a member persistently failed to file his disclosure statements. There are times when restitution would be best. I would order restitution if an innocent person had a loss as a result of the members conduct.

When a Member uses his or her office to put cash into their own pockets, then I would take the position that the trust of the people had been betrayed to the point where the seat should be declared vacant.

I am fully aware that resignation or removal from a post as Minister would be the inevitable result of the Assembly accepting the findings I have made in every jurisdiction in Canada.

Reprimand

I recommend to the Assembly that the Member for Tu Nedhe be reprimanded for violating section 66(1) of the Act by obtaining a private benefit as a result of his office in relation to his residence at 43 Otto Drive, Yellowknife;

I recommend to the Assembly that the Member for Tu Nedhe be reprimanded for violating section 67(b) of the Act by failing to refrain from conduct which would erode public confidence in his integrity, in relation to his residence at 43 Otto Drive, Yellowknife;

I recommend to the Assembly that the Member for Tu Nedhe be reprimanded for violating section 67(a) of the Act by failing to perform his duties of office and arrange his private affairs in a manner to maintain public confidence in his impartiality, in relation to his relationship with Roland Bailey, during and after Mr. Bailey's year of post-employment restrictions;

I recommend to the Assembly that the Member for Tu Nedhe be reprimanded for violating section 67(b) of the Act by allowing his office to be used to advance his private interest in the Ft. Resolution Office Complex construction project;

I recommend to the Assembly that the Member for Tu Nedhe be reprimanded for violating section 69(1) of the Act for failing to declare a conflict at the Cabinet Meeting of May 16, 1996 in relation to his private interest in lands in Ft. Resolution;

I recommend to the Assembly that the Member for Tu Nedhe be reprimanded for violating section 76(1) of the Act by accepting a benefit in the form of air travel and accommodations from Roland Bailey in the spring of 1997;

I recommend to the Assembly that the Member for Tu Nedhe be reprimanded for violating section 67(a) of the Act by providing to the Clerk of the Assembly and to the Conflicts of Interest Commissioner documents which he knew to be untrue or to contain untruths.

Costs

Section 83(1)(b)(vii) of the *Act* permits the Commissioner, as a punishment, to make an recommendation to the Assembly that the member pay costs. Costs are based on the money spent to put forward a case.

Aside from Commission counsel and counsel for Mr. Morin, I recognized three participants in this proceeding: Jane Groenewegen, the M.L.A. from Hay River and complainant, Mike Mrdjenovich, businessman and Roland Bailey, businessman, both from Yellowknife. Over the course of the hearings the role of each has changed, but each has been important in achieving the balance needed to make this process work.

Mr. Mrdjenovich and Mr. Bailey say they do not want costs. Ms. Groenewegen has asked for her costs. She has been very reasonable. She has asked that her costs to bring forward the complaint be included. She has not asked that the costs of her participation in the hearings be used to find costs.

She says that she will rely on the Legal Defence fund and the money she has raised. I do not think that the people, companies and organizations who contributed to the Defence Fund saw their contribution as a way to help Donny Morin out of his obligation to pay costs. I am not prepared to total up all their contributions and apply them to Mr. Morin's credit.

I am satisfied that Ms. Groenewegen was a necessary and interested party in this proceeding. Particularly in the initial stages of the Inquiry she was the factor which moved this worthwhile complaint forward. This Legislation encourages public participation and allows for complaints from any person.

I still believe that there should be a regular way of funding complainants' and other's legal expenses. I would still be prepared to recommend paying Mrs. Groenewegen's legal fees to the Management Services Board, if they were prepared to consider the matter again. But in the absence of that decision or support, it is not Mrs. Groenewegen who should be paying for the costs of bringing this complaint forward.

I also consider that the conduct of the Member from Tu Nedhe suggests that he, of the

two, should be the one to pay. The Premier directly challenged Ms. Groenewegen, in the Assembly, to file a conflicts complaint.

I have also taken into account the significant personal attacks on Mrs. Groenewegen as an aspect of the defense of this case, both through counsel in the hearings and directly by Premier Morin in the press. And these attacks continued right into the last minutes of the hearings.

If paying costs under the conflicts legislation is punishment, this is an appropriate case for it.

I recommend to the Assembly that, failing appropriate and full public funding, that Mr. Morin pay, and Ms. Groenewegen receive, all of Mrs. Groenewegen's costs in these hearings, from start to finish, plus one dollar, which is to be paid personally, in cash.

The dollar should be payable, whether or not there is public funding.

Thanks

I would like at this time to express to the Legislative Assembly, its Members, the Clerk of the Assembly and his staff, my thanks for their continuing assistance and support in the performance of my duties. They are always appreciated.

DATED AT YELLOWKNIFE IN THE NORTHWEST TERRITORIES
THIS 24TH DAY OF NOVEMBER, 1998



Anne Crawford
Conflict of Interest Commissioner for the
Northwest Territories

