



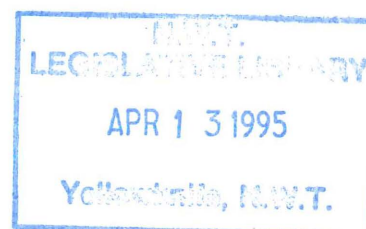
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TABLED DOCUMENT NO. 95 - 12 (T) TABLED ON APR 12 1995

**IN THE MATTER OF A COMPLAINT BY MR. KARL MUELLER  
WITH RESPECT TO ALLEGED CONTRAVENTIONS  
OF PROVISIONS OF PART III OF  
THE LEGISLATIVE ASSEMBLY AND EXECUTIVE COUNCIL ACT  
BY THE HONOURABLE NELLIE COURNOYEA, PREMIER.**

**REPORT OF THE CHIEF COMMISSIONER  
PURSUANT TO SECTION 81 OF PART III  
OF THE LEGISLATIVE ASSEMBLY  
AND EXECUTIVE COUNCIL ACT.**

**APRIL 12, 1995**



In the matter of a complaint by Mr. Karl Mueller with respect to alleged contraventions of provisions of Part III of the Legislative Assembly and Executive Council Act by the Honourable Nellie Cournoyea, Premier.

This report deals with the allegations contained in the complaint filed on March 17, 1995 by Mr. Karl Mueller, against Nellie Cournoyea, Premier of the Northwest Territories.

#### First Allegation

This allegation is stated in the complaint as follows:

"Part III Section 67(a)

Honourable Nellie Cournoyea has contravened this part-section by recalling and hiring a Bob Doherty, a former resigned GNWT Civil Servant, who was Assistant Deputy Minister of Department of Public Works GNWT into the position of Deputy Minister for the GNWT Dept. of Public Works (under contract). Mr. Doherty is still in this position. There has been no reason given to the Public as to why and who extended his position (under Contract or otherwise) or why Mr. Doherty remains in this position. Further, this action was discussed in the Legislative Assembly by Fred Koe, MLA. He stated that this was an incorrect procedure that had been taken and that another GNWT employee wanted and would be suitable for the position of Deputy Minister in GNWT DPW. He would have applied for/accepted the position had it been advertised or had he been appointed."

Section 67 refers to the obligations of members in general with 67(a) setting out the following:

"67. Each member shall

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

After reviewing this allegation in light of the provisions of the Public Service Act I am satisfied that there was in fact no breach of section 67(a) of the Legislative Assembly and Executive Council Act (hereafter referred to as the "Act"). Section 16.1(1) of the Public Service Act, as amended, states

"The Commissioner in Executive Council, on the recommendation of the Premier, has the exclusive right and authority to appoint persons to the position of Deputy Minister in the public service."

Obviously, the Premier has confidence in Mr. Doherty's ability to administer the day-to-day business of his department or she would not have recommended him to her cabinet colleagues. It is for the electorate or her fellow MLAs to decide if she has misplaced her trust. In any event, the hiring of Mr. Doherty under contract, for whatever amount and for however long, under the provisions of the Public Service Act is certainly not reviewable by this office as a breach of section 67(a) of the Act.

#### Second Allegation

This allegation is stated in the complaint as follows:

"Part III Section 67(b)

Honourable Nellie Cournoyea did not have to hire Bob Doherty but for reasons unknown why she felt Mr. Doherty was the best person for that position is unknown. We can conclude that she enticed him to this position by offering him a high salary of \$180,000.00 per year. (Re: Premier Harcourt March 10, 1995 Conflict of Interest based on a Reporter saying Harcourt gave a NDP supporter contracts).

Hiring Mr. Doherty did not benefit the public. He could not manage his own business he had in Ontario, so how can he manage a Government Department. He does not have the education or expertise for this position."

Section 67(b) provides

"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; ..."

I am unable to find that Ms. Cournoyea was in breach of either of the two aspects of this section. She is not alleged to have accepted any remuneration, gift or benefit which would trigger the prohibition contained in the first part of the section. With regard to the second aspect, I am of the view that given the power invested in the Premier, pursuant to the Public Service Act, which has already been referred to above, she has acted in a manner that would in the words of the section, "bear the closest public scrutiny."

### Third Allegation

This allegation is stated in the complaint as follows:

"Part III Section 70(c)

Honourable Nellie Cournoyea DID make representation for remuneration on behalf of Mr. Doherty with respect to (c): any other matter (hiring him for another contract or probable extension of this contract) that relates directly or indirectly to the performance of the duties (Deputy Minister from Assistant Deputy Minister) of DPW office of the member, since Honourable N. Cournoyea oversees all government departments. Over the years they knew each other and it is very questionable that they became friends."

Section 70 provides:

"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."

This section is intended to prevent members receiving remuneration for lobbying on another person's behalf. I have not been provided, nor have I discovered, any information or evidence that Ms. Cournoyea received any remuneration of any kind or from any source whatsoever for her alleged representation on behalf of Mr. Doherty. In my view, the complainant has misinterpreted this section and is under the impression that the "remuneration" flows to the person who is the subject of the representation, in this instance, Mr. Doherty. However, even if I accepted that interpretation, which I do not, the allegation would still not be justified. The Premier has, as has already been pointed out, the sole authority under the Public Service Act to recommend Mr. Doherty's appointment, consequently, any representations she would make for remuneration for Mr. Doherty would have to be to herself, a state of affairs which would appear to be fanciful at best.

#### Fourth Allegation

This allegation is stated in the complaint as follows:

"Part III Section 68(1)

Honourable Nellie Cournoyea did use information she gained in the executive offices while being MLA, Minister, and then Government Leader. She promised during her campaigning that she would support Access to Information as it was initially written which was supported by the Public. As Government Leader she allowed this Act to be rewritten so as it will be of no use to the Public. Subsequently, she agreed to have this Act sit until a new election is called - leaving a chance that it will be defeated in the next election. Further, this Act does not meet the General Public availability of their requests and directly furthers Honourable N. Cournoyea's private interests as she fears that what she has done and written (track record) will defeat her in the next election.

Further, Honourable Nellie Cournoyea has allowed herself and the GNWT MLA's to write the up a Business Incentive Policy to support Northern Business and then through the GNWT evaluation support whoever they want, thus betraying the

Northern Residents."

Section 68(1) reads

"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 of the spouse or a dependent child of the member."

In the first paragraph of this allegation it is asserted that Ms. Cournoyea, using information she gained during her tenure with the Government of the Northwest Territories, delayed the coming into force of the Access to Information Act to further her private interests. This claim attributes to the Premier a power she does not possess. The decision to dictate the substance or affect the timeliness of this Act would have to be made by the Legislative Assembly since it has the sole authority for the enactment of legislation and when it subsequently comes into force. It follows then that I can find no justification to this portion of the fourth allegation.

The second paragraph deals with the Business Incentive Policy and a suggested betrayal of northern residents. Even if the allegations contained therein were correct, and in my view they are not, in order to show a breach of section 68(1) of the Act, Ms. Cournoyea would have had to act in such a way as to further her own private interests by using or sharing information not available to the general public. There has been no suggestion that this was done nor has any evidence come to light that would indicate she intended to do so.

#### Fifth Allegation

This allegation is stated in the complaint as follows:

"Part III Section 70(1)

Honourable N. Cournoyea did make representation for remuneration on behalf of an unregistered Saskatchewan Contractor for a contract in the NWT. Registered or not registered with respect to awarding of a contract by the GNWT DPW, (when she was Minister) she intervened despite intervention by the

regional MLA."

Section 70 provides:

"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."


As has already been discussed in the "Third Allegation", this section is included in the Act to prevent lobbying for remuneration by members (my emphasis) on behalf of other persons. Therefore, it is immaterial with regard to this Act as to whether or not a Saskatchewan contractor unregistered in the Northwest Territories was awarded a contract. To become material and substantiate any allegation with regard to the section it would have to be shown that Ms. Cournoyea had received remuneration from the contractor involved. My investigation shows absolutely no evidence of this and, in fairness to the complainant, I do not believe that this was his intent. Once again, as mentioned above, I believe the provisions of section 70 were misinterpreted.

In view of all of the above and pursuant to section 81(1)(a)(i) of the Act, I find that the complaint does not disclose a contravention of the Act in any way and it is hereby dismissed in its entirety.

I should take this opportunity to add that this complaint falls perilously close to being frivolous or totally political in nature. It is quite understandable that members of the public become frustrated from time-to-time with the operation of government bureaucracies as they affect their daily lives and, particularly, their means of earning a livelihood. Nevertheless, this should not be taken as justification for the filing of a complaint under this Act that is supported by mere rumour and innuendo. The Conflict of Interest provisions were enacted as a means of calling to account elected officials who take advantage of their power in ways the

Act proscribes. It is not to be used as a convenient means of attempting to sully the reputations of those office holders who happen to upset members of the electorate but otherwise act in a legal and proper manner.

Dated this 12th day of April 1995.



Joel W. Fournier  
Chief Commissioner  
Conflict of Interest Commissioner