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HAY RIVER MOBILE HOME PARK LTD.
25 STUDNEY DRIVE
HAY RIVER, N.W.T.
XOE OR6

PHONE 867-874- 3243
FAX: 867-874 - 6558

November 26, 1998

GNWT
LEGISLATIVE ASSEMBLY

ATTN: ALL HONORABLE MINISTERS FOR THE NORTHWEST
TERRITORIES

VIA FACSIMILE:

867-873 0169

Dear Sir or Madam:

Re: Conflict of Interest Inquiry

We are writing to you at this time to inform you of information that was to be tabled in the house , November 25, 1998, for information purposes regarding the above captioned. To give a bit of background we called Mr. David Hamilton, clerk of Legislative Assembly, Monday November 23, 1998 asking how we get a document tabled in the house regarding pertinent information for the conflict of interest. He explained that we must get a member of the house to table such document. We in turn wrote to Mr. Michael Miltenberger, MLA Thebacha, asking if would table the document. He called back stating that either himself or MLA for Hay River, Jane Groenwegen would table this item. Well this was not done and we feel that the information is important in order for MLA's to review the precedent information in dealing with such issues. Ms. Groenwegen was as you can review, was found guilty based on facts and the case was dismissed. We believe this gives each MLA the opportunity to review the process of the Conflict of Interest and the intent of it.

We would like to state that the intent of this document is for information purposes and would appreciate you reviewing it.

We would like to thank you for your time in this matter.

Yours truly,


BECKY SCHAUB

Northwest
Territories Legislative Assembly
Conflict of Interest Commission

IN THE MATTER OF A COMPLAINT WITH
RESPECT TO ALLEGED CONTRAVENTIONS OF
PROVISIONS OF PART III OF THE LEGISLATIVE
ASSEMBLY AND EXECUTIVE COUNCIL ACT BY
JANE GROENEWEGEN, MLA FOR HAY RIVER.

Report of the Chief Commissioner pursuant to
Section 81 of Part III of the Legislative Assembly
and Executive Council Act.

July 3, 1996

IN THE MATTER OF A COMPLAINT WITH RESPECT TO ALLEGED
CONTRAVENTIONS OF PROVISIONS OF PART III OF
THE LEGISLATIVE ASSEMBLY AND EXECUTIVE COUNCIL ACT
BY JANE GROENEWEGEN, MLA FOR HAY RIVER

NATURE OF COMPLAINT

On April 30, 1996, the complainant, Mr. Greg Rowe wrote to the Clerk of the Legislative Assembly setting out certain information that he believed constituted a breach of the conflict of interest rules as contained in Part III of the Legislative Assembly and Executive Council Act (hereinafter referred to as the "Act"). Mr. Rowe complained that Mrs. Groenewegen, as an MLA, became personally involved in attempting to cancel or postpone a contract that was about to be awarded pursuant to a call for proposals from the Department of Public Works and Services, (hereinafter referred to as the "department"). Greenway Holdings, a company in which Mrs. Groenewegen has a controlling interest as defined in section 65(2) of the Act was one of the firms that submitted a proposal. Mr. Rowe's firm Hay River Mobile Home Park Ltd., also submitted a proposal and was the eventual recipient of the contract. A copy of the complaint is attached hereto as Schedule "A".

BACKGROUND

The department called for proposals from interested parties for the supply of approximately 800 square metres of office space in Hay River to accommodate the requirements of the departments of Transportation, Economic Development and Tourism and Municipal and Community Affairs. At the time of the proposal call, these departments were located in the Gensen building, an office/commercial complex located in the business district of Hay River. The

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lease for that accommodation was to expire on March 31, 1996. Proposal documentation was available on Monday, January 22, 1996 with the return date of Friday, February 16, 1996. A total of six proposals, including one from the Gensen Land Company, owners of the Gensen building, were received by the department within the time allowed. On April 4, 1996, by letter signed by the Deputy Minister of the department, the contract was awarded to Hay River Mobile Home Park Ltd.

At some point, after the closing date, but before the contract was awarded, information was obtained by Mrs. Sandra Lester, owner of the Hay River Bakery, a business located in the Gensen building, that the existing lease was not going to be renewed. Mrs. Lester is also the manager of the Gensen building on behalf of Mr. Grant Eriksen, the owner of the Gensen Land Company. Mrs. Lester's information also indicated that the contract would be awarded to a proponent who would erect approximately 20,000 square feet of new office-retail space, approximately double the space required by the department.

On March 26, Mrs. Lester was instrumental in arranging a meeting of several Hay River business owners, or their representatives, who would be affected by the new building. Mr. Richard Groenewegen, husband of the MLA was invited to attend but declined citing the obvious conflict situation. None of the other bidders were invited. As a result of the meeting a letter was sent to Mrs. Groenewegen requesting she intervene with the department on behalf of the eight signatories to the letter. A day or two earlier, Mrs. Lester had contacted Mrs. Groenewegen by telephone, asking her to arrange a meeting with the minister responsible for the department and Mr. Eriksen of Gensen. Mrs. Lester also tried to contact the minister directly but was unsuccessful. However, she did speak to Mr. Ernie Comerford, the minister's executive assistant, about her concerns.

Mrs. Groenewegen contacted the minister and/or his executive assistant and arranged a meeting with Mr. Eriksen for Tuesday, March 26. Mrs. Groenewegen attended the meeting along with her constituency assistant, Ms. Carmen Schauerte and Mr. Comerford. The meeting did not result in a delay or cancellation of the award of the contract which, as previously indicated was dated April 4, 1996.

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INVESTIGATION

This investigation commenced on June 12 in Hay River where I interviewed Greg and Jack Rowe, Sandra Lester, Henry Lefebvre and Carmen Schauerte. In Yellowknife, I questioned Mr. Ken Lovely, the deputy minister of the department, the Minister, the Honourable Goo Arlooto, Mr. Ernie Comerford, Mrs. Groenewegen, Mr. David Atkins and Ms. Sue Bevington, both senior officials in the department. By telephone, I interviewed Mr. Ralph Shelton, Regional Superintendent for the department in Fort Smith, Mr. John Berg, the project officer for this proposal, Mr. Peter Chaffey, a representative of the department in Hay River and Mr. Terry Camsell of the Hay River Metis Development Corporation. I have had additional discussions with several of those mentioned, as well as others.

It should be noted that there were suggestions from both sides that several aspects of this case may have a political bias to them. It seems that Mrs. Lester, and perhaps others involved, supported Mrs. Groenewegen in her successful bid to represent Hay River while the Rowes supported a losing candidate. I want to make it absolutely clear that whatever the motivation of any of the parties in this matter, whether in the laying of the complaint or in statements given to me, it will have no bearing whatsoever in determining if, in fact, there was a contravention of the conflict of interest provisions of the Act. That will be determined by the way Mrs. Groenewegen carried out her duties as an MLA vis-a-vis her private business affairs when viewed together with the conflict rules. Having said that however, I must also say that I am cognizant of the tendency of otherwise well-meaning individuals to consciously or unconsciously colour their statements or be selective in their rendition of the facts of certain events as they relate to friends, acquaintances or their own positions. I believe that this tendency may have been alive and well from time-to-time in this case.

CONFLICT OF INTEREST PROVISIONS

In the Act, there are three particular sections that are germane to this matter. I think it will be helpful and instructive if they are set out here.

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Section 66 provides:

"(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 the member."

Section 67 states:

"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, ...

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

Section 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.

(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."

DISCUSSION

In determining whether there has been a violation of the Act it is necessary to apply the evidence ascertained during my investigation to the terms of the legislation.

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S.66 Dealing first with section 66, I have come to the conclusion that indeed a conflict situation as defined therein did exist. There can be little question that as a result of her controlling interest in Greenway Holdings, together with the ownership position of her spouse in the same company, the member and her spouse were afforded the opportunity to directly or indirectly benefit from the fact she intervened in the contractual process. The fact that Mrs. Groenewegen did intervene is beyond doubt, being proved by her own statements, the evidence of the minister and others.

Once Greenway Holdings had submitted a proposal on the project it was incumbent upon the member to remain totally outside the process. This she did not do, although the evidence indicates that she recognized and commented upon the potential for conflict. Mrs. Groenewegen should not have discussed the matter with Mrs. Lester; she should not have arranged the meeting between the minister and Mr. Eriksen; she should not have attended the meeting and having attended she should not have taken any part in the discussion whatsoever.

The M.L.A. might have avoided being in conflict had she withdrawn Greenway's proposal prior to becoming involved with Mrs. Lester et al. Her evidence was that she attempted to do so and was told by an official that it was not possible once the proposal was submitted. I can find no corroboration for her statement although I questioned the officials involved closely. Furthermore, because her company submitted a proposal she knew, or ought to have known, that the documents issued in support of the project state that a proposal can be withdrawn at any time. (See paragraph 14 of Part I of the Lease Proposal Documents.)

There was evidence presented to me by departmental officials and other parties. I questioned that the member on several occasions remarked on how uncomfortable she felt being involved to the extent she was. I readily accept the veracity of these statements, however, in my opinion Mrs. Groenewegen's conduct is not excused by these assertions, which in fact, clearly indicate that she was well aware of her precarious position which should have moved her to take every step necessary to extricate herself.

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By intervening in the process in the manner in which she did, Mrs. Groenewegen afforded herself and her spouse the opportunity to benefit directly or indirectly to the extent that:

- 1) the proposal could have been withdrawn by the department, resulting in no new office space for Hay River thereby helping to ensure the viability of Greenway's own office building;
- 2) the contract could have been awarded to a proponent offering existing office space of which Greenway was one.

In her testimony to me which was corroborated by officials, the member was of the view that her company's proposal was weak and stood little chance of success. Ironically, Greenway's submission was ranked second by the department. In any event, nothing really turns on the status of Greenway's proposal vis-a-vis section 66, other than to illustrate the state of mind of the member.

As a result of all of the above, it is my decision that Mrs. Groenewegen did contravene section 66 of the Act.

S.67 Section 67 requires a member to perform his or her duties in a manner that will maintain public confidence and trust in the integrity, objectivity, and impartiality of the member. It also requires that any conflict that arises be resolved in the public interest. The question thus arises whether the member's conduct in this instance meets these standards. Can public confidence and trust in an MLA be maintained if that MLA becomes involved in a public process while having a private interest in it? I am inclined to believe, based on the evidence I have gathered, that by her actions Mrs. Groenewegen strained these fundamental standards of conduct, however, I am not prepared to find that she actually crossed the line that would find her in contravention of the provisions. If one was to conduct a survey of the electorate in Hay River on this question, it is likely that opinion would be divided and inconclusive at best. The ultimate test of public confidence, of course, will be decided at the next election.

S.68(2) This provision prohibits a member from using his or her office to influence a decision made by another person to further the private interests of

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the member or a spouse of the member. In this case, there can be little doubt that the member used her office to attempt to influence such a decision. The evidence on this point is quite clear and has already been discussed above. However, this section has a second element which requires that the conduct involved further the private interests of the member or spouse. This provision differs from section 66 which simply requires that the "member or spouse ... has significant private interests that afford the member, or the spouse ... the opportunity to directly or indirectly benefit from the performance of any of the duties of office of the member." (My emphasis.) I am convinced, based on the evidence that the member did not seek to further her private interests or those of her spouse. While by her conduct in arranging and participating in the meeting between the minister and Eriksen she clearly sought to influence a decision, there is every indication that she honestly believed she was acting in the best interests of several of her constituents and not her own. The testimony of several departmental officials support me in this position. Accordingly, it is my finding that Mrs. Groenewegen has not contravened the provisions of section 68(2).

Before I move on to deal with the consequences of the member's contravention of section 66 of the Act, I think it is appropriate to discuss two matters raised by Mr. Rowe in his complaint and our subsequent meeting.

One question posed by Mr. Rowe was whether Mrs. Groenewegen declared an interest with the department at the time of tendering the project so that the department would not routinely inform her, as an elected member, of the progress of the proposals or other confidential information.

My investigation indicates that Mrs. Groenewegen did not declare such an interest nor was she required to do so. I am advised by the department that it was well aware of the relationship of the member to Greenway; that she was not routinely or otherwise informed of the ongoing status of the project nor was she treated any differently than any of the other proponents.

A second concern raised by Mr. Rowe was that the recommendation to award the contract to a firm other than Genson could only have been known by upper management or the MLA.

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I am satisfied that the leak of the information came from one of the government departments occupying space in the Gensen building. Mrs. Lester and/or her husband has the cleaning contract for the building and it was during the performance of these duties that the information that the occupants would be moving to a new building was divulged, probably by a manager of one of the occupying departments. There is no evidence that I could ascertain that even remotely indicates that this information came from the member nor from a senior official of the department.

I believe Mr. Rowe's other concerns have already been dealt with.

DISPOSITION

Having found that Mrs. Groenewegen contravened section 66 of the Act it is necessary to turn to section 81(1) which states:

"The Chief Commissioner shall investigate a complaint and shall, after the investigation,

(a) dismiss the complaint, where the Chief Commissioner determines:

(i) that the complaint does not disclose a contravention of this Part,
(ii) that the contravention of this Part was trivial or was committed through inadvertence or by reason of an error of judgement made in good faith, or

(iii) that the member took all reasonable measures to prevent a contravention of this Part; or

(b) designate three commissioners as a Commission of Inquiry to conduct a hearing into the complaint.

Paragraphs (i) and (iii) of subsection (a) are easily dealt with. I am precluded from dismissing the complaint pursuant to paragraph (i) because I have decided that there was a contravention of the Act. Furthermore, I am similarly precluded pursuant to paragraph (iii) because I am of the view that the member did not take all reasonable measures to prevent a contravention. Thus I am left with paragraph (ii) of subsection (a) or subsection (b).

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Paragraph (iii) has three elements, each of which I will deal with in turn.

Was the contravention of this Part trivial? In my opinion, it was not. By her actions Mrs. Groenewegen opened the door to potentially serious consequences which could have resulted in significant financial loss or benefit to the parties involved, including herself. Furthermore, her conduct could have led to an erosion of public confidence in the government's bidding system in particular, and of elected officials in general.

Was the contravention committed through inadvertence? Black's law dictionary defines inadvertence as "heedlessness; lack of attention; want of care; carelessness." When used in a statutory context as in this instance, "the grounds on which a judgement or decree may be vacated or set aside; as, mistake, inadvertence, surprise or excusable neglect." Mrs. Groenewegen's conduct and the evidence convinces me that she was well aware that she had a potential conflict, but she proceeded anyway. While it was obviously a mistake for her to do so, it was not a mistake made in the sense in which the word is used in the definition. Since the conduct of the MIA is not within any of the other acceptable meanings set out above, it follows that it cannot be excused under inadvertence.

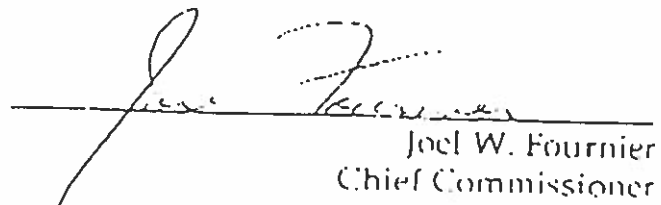
Was the contravention committed by reason of an error of judgement made in good faith? This element has two aspects, there must be an error of judgement and, most importantly, it must have been made in good faith.

The evidence bearing on this point is somewhat ambiguous. On the one hand there is a great deal of testimony indicating that the member was acting in support of her constituents and honestly believed that it was in the best interests of Hay River that the project not go ahead. There is her statement that she attempted to withdraw Greenway's proposal. There is also strong evidence supporting her contention that her proposal was weak and stood little if any chance of being accepted, although we know it placed second. I am also satisfied that she did not bring any pressure to bear on the department for preferential treatment of her company. Finally, she was candid in dealing with departmental officials and others when she stated she felt very uncomfortable because of her company's submission.

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Other evidence however, shows that the member took an active part in the meeting with Mr. Eriksen and the minister. Additionally, her contention that she attempted to withdraw cannot be substantiated. As well, as an active and knowledgeable business person, she knew or ought to have known, that by supporting the interests of some of her constituents she would leave herself open to active criticism from others she represents and to the kind of allegations that have been made.

After giving the matter a great deal of thought, I am satisfied that Mrs. Groenewegen made a serious error of judgement in not insisting that Greenway's proposal be withdrawn, by arranging the meeting with the minister, and in taking part in the meeting. Was this error of judgement made in good faith? I have weighed all the evidence and, on balance, I believe it was. Consequently, it will not be necessary to deal with subsection 81(1)(b) and, accordingly, I hereby dismiss the complaint against the member.


Joel W. Fournier
Chief Commissioner