

5 February 2024

The Honourable Shane Thompson, Speaker
Legislative Assembly of the Northwest Territories
Box 1320, 4570-48th Street,
Yellowknife, NT X1A 2L9

File 5758-17

Dear Mr. Speaker:

Report into Complaint by Nancy Vail that then-MLA breached the Members' Code of Conduct

This is my report pursuant to section 102 of the *Legislative Assembly and Executive Council Act* (the "Act") dismissing the complaint by Nancy Vail alleging that then-MLA Katrina Nokleby breached the Members' Code of Conduct during a verbal interaction on Sunday, October 1, 2023.

A. THE CODE AND THE GUIDE

The Legislative Assembly has adopted both the *Code* and the *Guide* to it; both are authoritative, and both continue in force from Assembly to Assembly until amended by the Assembly.

Section 2 of the *Code* provides as follows:

Members must act lawfully and in a manner that will withstand the closest public scrutiny, upholding the integrity and honour of the Legislative Assembly and its Members. Members shall ensure their conduct does not bring the integrity of their office or of the Legislative Assembly into disrepute.

The purpose of the *Guide* is to assist Members of the Legislative Assembly in understanding how the provisions of the *Code* apply in particular circumstances. It provides the following commentary to section 2:

Commentary

As elected representatives of the people of the Northwest Territories, Members hold a position of trust and authority. Members are expected to hold themselves to a high standard of conduct. While

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this expectation is largely directed at a Member's public behaviour, Members must recognize that, as elected officials, behaviour in their personal lives will also be closely scrutinized. A Member's integrity is fundamental to maintaining public confidence, both in the individual Member and in the Legislative Assembly as an institution.

The Legislative Assembly will not generally be interested in the personal or private affairs of a Member. However, if a Member's conduct is such that knowledge of it would be likely to impair the public's trust in the institution of the Legislative Assembly, the Legislative Assembly may be justified in taking action. This is particularly so where the conduct in question is unlawful.

Excessive public consumption of alcohol, cannabis or other drugs or intoxicants, particularly where such consumption results in behaviour that could lessen the dignity of the Legislative Assembly, is unacceptable and constitutes a breach of the Code of Conduct.

Violation of certain laws, such as those involving a breach of trust or abuse of a position of trust, authority or intimacy, will be considered to be particularly damaging to the integrity and honour of the Legislative Assembly. This factor will be considered by the Legislative Assembly in deciding what action, if any, is to be taken under the Assembly's power to regulate its internal affairs and discipline Members.

B. THE ROLE OF THE INTEGRITY COMMISSIONER

Prior to amendments in 2022, section 102 of the Act essentially provided that the Integrity Commissioner was a gate-keeper deciding whether to dismiss a complaint on specified enumerated grounds or refer it to a Sole Adjudicator for a formal inquiry.

The 2022 amendments increased the scope of the Integrity Commissioner's function to permit the Commissioner to (1) send a complaint to mediation, or (2) make a finding that a Member was guilty of contravening a provision of Part 3 of the Act or the *Code* and recommending a sanction to the Legislative Assembly, as well as retaining the Integrity Commissioner's ability to dismiss a complaint on the specified enumerated grounds or refer it to a Sole Adjudicator for a formal inquiry.

The current provision reads as follows:

102. (1) *In this section, "alternative dispute resolution process" includes mediation.*
- (2) *After conducting an investigation under section 101, the Integrity Commissioner shall do any one of the following:*
- (a) *dismiss the complaint, if the Integrity Commissioner determines that*
 - (i) *the complaint is frivolous or vexatious or was not made in good faith,*
 - (ii) *there are insufficient grounds to warrant an inquiry,*
 - (iii) *the complaint does not disclose a contravention of this Part of the Code of Conduct,*

- (iv) *a contravention of this Part or the Code of Conduct was minor or was committed through inadvertence or by reason of an error in judgment made in good faith,*
 - (v) *the member or former member took all reasonable measures to prevent a contravention of this Part or the Code of Conduct, or*
 - (vi) *the public interest would not be served if the complaint proceeded to an inquiry before a Sole Adjudicator;*
 - (b) *refer the matter to an alternative dispute resolution process if the complaint is in respect of a breach of the Code of Conduct;*
 - (c) *find the member or former member to be guilty of contravening a provision of this Part or the Code of Conduct and recommend to the Legislative Assembly one or more punishments in accordance with subsection (6);*
 - (d) *direct that an inquiry be held before a Sole Adjudicator.*
- (3) *The Integrity Commissioner shall prepare a report of*
- (a) *what option was chosen under subsection (2);*
 - (b) *the reasons for the choice; and*
 - (c) *what punishment is recommended under paragraph (2)(c), if applicable.*
- (4) *The Integrity Commissioner shall*
- (a) *submit the report prepared under subsection (3) to the Speaker; and*
 - (b) *deliver a copy of the report to*
 - (i) *the member or former member,*
 - (ii) *the complainant,*
 - (iii) *each other member, and*
 - (iv) *the Clerk.*
- (5) *The Speaker shall, at the first opportunity, lay a copy of the report before the Legislative Assembly.*

(6) *Any punishment that the Integrity Commissioner recommends under paragraph (3)(c) must be the same as what the Sole Adjudicator may recommend under*

(a) *paragraph 106(1)(b) for a member; and*

(b) *paragraph 106(1)(c) for a former member.*

...

106. (1) *After conducting an inquiry, a Sole Adjudicator shall submit a disposition report, with reasons, to the Speaker, the member or former member complained of and the complainant, advising that*

(a) *the complaint is dismissed, where the Sole Adjudicator has determined*

(i) *that the complaint does not disclose a contravention of this Part or the Code of Conduct,*

(ii) *that a contravention of this Part or the Code of Conduct was minor or was committed through inadvertence or by reason of an error in judgment made in good faith, or*

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

(b) *the Sole Adjudicator has found the member to be guilty of contravening a provision of this Part or the Code of Conduct, and is recommending to the Legislative Assembly that one or more of the following punishments be imposed:*

(i) *a reprimand,*

(ii) *a fine in an amount not exceeding \$25,000 established by the Sole Adjudicator,*

(iii) *an order requiring the member to make restitution, in an amount determined by the Sole Adjudicator, to the Government of the Northwest Territories or to a public agency of the Government of the Northwest Territories, of any gain realized by the member or his or her spouse or dependent child 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 participation of the member or his or her spouse or dependent*

child 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,*
 - (vii) an order that the member pay costs in an amount determined by the Sole Adjudicator; or*
- (c) the Sole Adjudicator has found the former member to be guilty of contravening a provision of this Part or the Code of Conduct, and is imposing one or more of the following punishments [which are the same as in the previous paragraph excluding a reprimand, a suspension, or a declaration that the seat be vacated—none of which would apply in the case of a former member].*

C. THE COMPLAINT

On Thursday, October 5, 2023, I received a complaint from Nancy Vail alleging that then-MLA Katrina Nokleby had breached the MLAs' *Code of Conduct* during a verbal interaction on Sunday, October 1, 2023. The complaint alleges that Ms. Nokleby was rude and abusive in making statements to Ms. Vail who was camping on a vacant lot across the road from Ms. Nokleby's residence.

As required by section 101 of the Act, I acknowledged receipt of the complaint; and gave notice of the complaint to Ms. Nokleby, asking for a response which I received in due course.

D. DISPOSITION

After considering the matter, I have dismissed the complaint under the following parts of section 102(2)(a) for the following reasons:

(i) The complaint is frivolous or vexatious or was not made in good faith.

Ms. Vail has been a long-time public critique of Ms. Nokleby; she made a post on Facebook on the eve of the October election publicly repeating her allegation and urging people not to vote for Ms. Nokleby; she told me she was going to make a complaint to the RCMP about the event, but they closed their file after she did so; she pressed me to deal with her complaint and criticized the time I provided to Ms. Nokleby to obtain legal advice before responding; she copied the then-Speaker with her complaint; and she took her complaint to the media.

Given all of these factors, Ms. Vail's complaint is frivolous, and vexatious, and not made in good faith.

(ii) There are insufficient grounds to warrant an inquiry

In my view, no further inquiry would be warranted because Ms. Nokleby was not re-elected; there is a new Assembly about to commence on its work; and there would be no practical purpose in inquiring further into this complaint.

Either of the above grounds would on its own be sufficient to dismiss the complaint.

In making the decision to dismiss this complaint, I recognize that the purpose of the Members' *Code of Conduct* is to set high standards which MLAs as leaders are expected to abide by in every aspect of their daily lives in order to earn and keep the respect of the citizens they serve. However, I want to emphasize that it is not the purpose of the *Code* to be used to advance personal vendettas or as a vehicle for making insubstantial complaints about Members, who are human, not required to be perfect, and do not deserve to be criticized for the woof and warp of everyday life.

I also want to flag that resigning or being defeated in an election does not end a Member's obligations under the *Act* and the *Code*. The Commissioner will need to deal with each case on its own merits. In other circumstances, an inquiry might well be appropriate.

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As required by the Act, I am providing a copy of this report to the complainant and to Ms. Nokleby, and to the Clerk who will deliver a copy to each member of the Legislative Assembly.

Section 102(4) requires the Speaker to lay a copy of the report before the Legislative Assembly at the earliest opportunity.

Given that I have dismissed the complaint, no further action is required.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'D. Jones', with a long horizontal flourish extending to the right.

David Phillip Jones, K.C.
NWT Integrity Commissioner