

15 September 2023

Our File No. 5758-13

The Honourable Frederick Blake, Jr., Speaker
Legislative Assembly of the Northwest Territories
Box 1320, 4570 - 48th Street
Yellowknife, NT X1A 2L9

By email

Dear Mr. Speaker:

Investigation into a complaint made by the Hon. Shane Thompson, MLA alleging that Ms. Katrina Nokleby, MLA has breached the Members' *Code of Conduct*

Section 100(2) of the *Legislative Assembly and Executive Council Act* (the “Act”) provides that a Member or any other person may file a written complaint with the Integrity Commissioner setting out reasonable grounds for believing that a Member or former Member has contravened any provision of the conflict of interest provisions in Part 3 of the Act or the Members' Code of Conduct:

100(2) A member or other person who believes on reasonable grounds that a member or former member has contravened any provision of this Part [3 of the Act dealing with conflicts of interest] or the Code of Conduct may file a written complaint setting out those grounds with the Integrity Commissioner.

A. THE COMPLAINT BY MR. THOMPSON

In June 2023, I received the following written complaint from the Hon. Shane Thompson, MLA for Nahendeh, alleging that certain emails and social media posts by Ms. Katrina Nokleby, MLA for Great Slave, breached the Members' *Code of Conduct* (the “Code”).

The Complaint

I am filing this complaint against MLA Nokleby as demonstrated through her emails and Facebook posts, has engaged in a pattern of harassing behaviour. This behaviour is inconsistent with the Code of Conduct provisions 2 and 3, and falls within the definition of “harassment” under the Harassment Policy.

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The emails and Facebook posts demonstrate a pattern of behaviour which demeans, belittles and causes personal embarrassment to myself as well as staff in the Departments I am responsible for. There is also a pattern of behaviour of spreading rumours without making the effort to determine if the rumour is grounded in truth.

Several approaches have been considered over the past number of years to deal with MLA Nokleby's behaviour. An initial approach was to ignore the behaviour and hope for improvement. Improvement did not occur.

More recently there has been an effort to challenge the more egregious communication, however; that approach has usually resulted in additional backlash. There is also concern over the volatility of the MLA, and the likelihood of a positive outcome in raising points of order because of the retaliatory nature of responses.

The following sections outline emails received and social media postings that are the evidence of inappropriate conduct and harassment as expressly prohibited under the Code of Conduct and the Harassment Policy. Bolded for emphasis are excerpts from the emails that are improper.

...

Conclusion

I provide this evidence in support of a complaint to the Integrity Commissioner and agree to an investigation pursuant to s. 101 of the Legislative Assembly and Executive Council Act. I am prepared to participate in such an investigation but am of the view that an inquiry by a sole adjudicator is not warranted based on my evidence. However, I am interested in receiving the views and recommendations from the Integrity Commissioner on this and other evidence related to the complaint against MLA Nokleby.

In Summary

I believe that the information set out above provides a sufficient basis for a complaint under the Code of Conduct against MLA Nokleby.

Sections 2 and 3 of the *Code* read as follows:

2. 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 the conduct does not bring [the] integrity of their office or of the Legislative Assembly into disrepute.
3. Members must treat members of the public, one another and staff appropriately and without harassment. Members must take all reasonable steps to ensure their work environment is free from harassment.

B. MS. NOKLEBY’S RESPONSE TO THE COMPLAINT

As a preliminary matter, Ms. Nokleby questioned whether a complaint to the Integrity Commissioner was the appropriate forum for addressing Mr. Thompson’s complaint. She noted that the commentary in the *Guide to the Rules Relating to the Conduct of Members* (the “*Guide*”) provides that the prohibition against harassment in the *Code of Conduct* is not intended to duplicate the process contained in the Legislative Assembly’s *Workplace Harassment Policy* which addresses complaints by one Member about harassment by another Member. As no complaint has been made against Ms. Nokleby under the *Workplace Harassment Policy*, that mechanism should not be overtaken by a complaint under the *Code*.

Addressing the substance of the complaint, Ms. Nokleby recognized that she communicates in a “direct and to-the-point manner” which she attributed to her experience as an engineer working in mines and other male-dominated fields. Recognizing that this style of communication may not translate well into other fields, including politics, she says she has done considerable work to appreciate the impact her communication style has on others.

However, the *Code* should not prevent vigorous debate or disagreement, remove certain topics from discussion, or limit the ability to share concerns of constituents or attempts to hold the government accountable. She referred to a number of decisions by other integrity commissioners recognizing the fundamental importance of appropriate political speech, as well as limitations relating to incorrect statements of a factual nature and the need to avoid impugning someone’s personal character. She also referred to rulings by former Speakers that the use of “strong and inflammatory language” does not necessarily violate the Assembly’s rules. Upholding the integrity and honour of the Legislative Assembly does not prevent a Member from speaking candidly on political issues.

Ms. Nokleby then addressed the contexts of the communications about which Mr. Thompson has complained, as well as the nature and content of those communications: (a) the Government’s use of sole-source contracts; (b) the Fort Smith active shooter incident; (c) Lutselk’e caribou harvesting; (d) the practice of marking documents as “confidential”; (e) hunting tags; (f) a memorandum of understanding with the Canadian Red Cross; (g) other social media posts; (h) the June 2, 2022 letter from Minister Thompson. She distinguished between emails addressed to Mr. Thompson (which were essentially private communications) and her social media postings (which were public). She also noted that some parts of the complaint appear to have been written or edited by persons other than Mr. Thompson who report to the Premier. Although she recognizes that there can be legitimate criticisms of some of her communications, she stands by her strong criticism of what she believes is an ongoing failure of Cabinet (including Minister Thompson) to address fundamental issues of transparency and accountability in the NWT.

Ms. Nokleby concluded as follows:

... I pride myself on being outspoken and advocating fearlessly for the people of the Northwest Territories. The comments, emails and posts that are the subject of this complaint are the kind of “political rhetoric” identified by the Integrity Commissioner for the City of Toronto as being essential to democratic debate.... My comments also often reflect my frustration with persistent, recurring issues and with the slow pace of change, particularly in light of the crises faced by individuals and communities across the territory.

I understand that Minister Thompson takes a different view of my communications with him and social media posts. However, at no point has Minister Thompson come to my office, called me or approached me in person to discuss any of these issues. This is despite the fact that we work in the same building, down the hall from one another. Instead, Minister Thompson has chosen to stockpile records of my communications and build a complaint on evidence dating back nearly 3 years—three quarters of the life of this Assembly—in support of a complaint against me. I have difficulty believing that this is anything but an improper attempt to embarrass and silence me.

For the reasons set out at the outset of my response, the appropriate vehicle for addressing any concerns Minister Thompson may have about my communications is the Workplace Harassment Policy. However, should you determine that any of my communications are appropriately reviewed through this Code of Conduct complaint, I respectfully submit that none merit an inquiry or a finding of guilt. Any errors I have made were, in my submission, minor and made through inadvertence or by reason of an error of judgement made in good faith, such that the complaint should be dismissed.

C. 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. The amended provision retained 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 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.

D. THE CODE AND THE GUIDE

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

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. The *Guide* contains commentary on Part 2 of the *Code*, which sets out a Member's substantive obligations under the *Code*.

- 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 *Guide* 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 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.

- Section 3 of the *Code* provides as follows:

Members must treat members of the public, one another and staff appropriately and without harassment. All Members must take all reasonable steps ensure their work environment is free from harassment.

The *Guide* provides the following commentary to section 3:

Commentary

Conduct by a Member that is alleged to constitute harassment, sexual harassment or discrimination of or against another Member, Constituency Assistant, employee or contractor of the Legislative Assembly is addressed through the Legislative Assembly's Workplace Harassment Policy, found in the Members' Handbook. The prohibition against harassment in the Code of Conduct is not intended to duplicate the process, found in the Workplace Harassment Policy, for addressing such complaints. Complaints of harassment that fall outside the Workplace Harassment Policy may be made to the Integrity Commissioner pursuant to the process set out in Part 3 of the Legislative Assembly and Executive Council Act. Harassment means engaging in a course of vexatious comment or conduct, based on one or more prohibited grounds of discrimination, which the Member knows or ought reasonably to know, is unwelcome by any person.

The following grounds of harassment are prohibited in the Northwest Territories:

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| • race | • age | • family status |
| • colour | • disability | • family affiliation |
| • ancestry | • sex (including pregnancy) | • political belief |
| • nationality | • sexual orientation | • political association |
| • ethnic origin | • gender identity or expression | • social condition |
| • place of origin | • marital status | • a conviction that is subject to a pardon or record suspension |
| • creed | | |
| • religion | | |

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Members of the Legislative Assembly may, in some contexts, be excluded from the authority of the Human Rights Commission and Human Rights Adjudication Panel under the Human Rights Act by virtue of parliamentary privilege. Where the Human Rights Act does not apply, the Legislative Assembly retains the power to inquire into and respond to allegations of Member misconduct as an incident of privilege, including through the process set out in Part 3 of the Legislative Assembly and Executive Council Act [including sections 74.1 and 75 which refer to the Code]. However, Members should be aware that the *Human Rights Act* may apply to aspects of their personal and professional lives, including in tenancy relationships, employer-employee relationships, and the provision of services to the public.

[Underlining added for emphasis.]

E. The *Workplace Harassment Policy*

The *Workplace Harassment Policy* (the “*Policy*”) was created by the Board of Management in 1999, took effect at the start of the 14th Legislative Assembly, and has been amended from time to time. The *Policy* is included in the *Members’ Handbook*.

The *Policy* articulates the following commitment:

The Northwest Territories Legislative Assembly is committed to a healthy, harassment-free and non-discriminatory workplace for all Members of the Assembly, employees of the Assembly and Constituency Assistants. All Members are responsible for fostering and maintaining an environment that is free of harassment and discrimination.

Persons who allege harassment or discrimination by a Member can seek resolution under this Policy or choose another option for resolving harassment issues, including policies in place with the Government of Northwest Territories, remedies available under the Human Rights Act, complaints to the Integrity Commissioner under the Members’ Code of Conduct, and remedies available in either the civil or criminal courts.

[Underlining for emphasis.]

The *Policy* defines “harassment” as follows:

6.1 DEFINITIONS

HARASSMENT

For the purposes of this policy, harassment means any improper behaviour by a Member:

- that is directed to and is offensive to any Member, Constituency Assistant, employee, volunteer or intern of the Legislative Assembly, contractor

performing work for the Legislative Assembly, page or Youth Parliamentarian, or Statutory Officer; and

- which the Member knew or ought reasonably to have known would be unwelcome.

Harassment includes conduct, comment or display, made on either a one-time or an on-going basis that demeans, belittles or causes personal humiliation or embarrassment to any of the people to whom the policy applies. Harassment includes sexual harassment.

There may be circumstances where a single incident would not be considered to be harassment but a series of such incidents would constitute harassment. Harassment may be based upon personal characteristics including race, colour, ancestry, nationality, ethnic origin, place of origin, creed, religion, age, disability, sex, sexual orientation, gender identity, gender expression, marital status, family status, family affiliation, political association or social condition, and without regard to whether he or she has had a conviction for which a pardon or record suspension has been granted.

Harassment includes retaliation against a person for having invoked this policy, for having participated in procedures under this policy as a witness, or for having otherwise assisted a person who has invoked this policy or participated in these procedures.

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6.2 EXAMPLES OF HARASSMENT

Harassment can include, but is not limited to, the following:

- unwelcome remarks, jokes, innuendoes or taunts of a sexual or racial nature, causing embarrassment or offence;
- display of objectionable materials that are sexually explicit;
- refusal to work with a person because of gender, racial background or other personal characteristics;
- insulting gestures, jokes, disparaging written materials based on race or gender;
- degrading or derogatory remarks;
- unwelcome sexual advances, propositions, or inquiries and/or comments;
- persistent, unwanted contact or attention after the end of a consensual relationship;
- inappropriate physical contact or touching or seeking sexual favours; and
- verbal or physical abuse or threats.

6.3 LOCALE OF HARASSMENT

This policy applies to any harassment that may occur at, but is not limited to, the following:

- the Legislative Assembly building,
- Legislative Assembly social functions,
- work-related conferences, work-related travel,
- in Members' constituency offices,
- in the offices of a statutory officer of the Legislative Assembly, and
- over the telephone, via email or on social media.

There is a sufficient connection with the Legislative Assembly for the purposes of this policy if the behaviour interferes, or could reasonably be regarded as being capable of interfering, with the proper functioning of the Legislative Assembly or with a person's dignity or privacy in respect of matters connected with the person's relationship with the Legislative Assembly.

[Underlining for emphasis.]

The *Policy* provides for mediation and arbitration of complaints. After receiving a disposition report, the Board of Management may decide to take no further action in the matter, may reprimand the Member [and presumably any other respondent] or the complainant, or may recommend to the Legislative Assembly any further disciplinary action to be taken against the Member [or presumably any other respondent].

Section 6.8 of the *Policy* recognizes that it is not to be construed as preventing or impeding the proper exercise of a Member's function as a Member of the Legislative Assembly, including the ordinary and proper representation of members of the public.

F. ANALYSIS

Given the explicit recognition in the *Harassment Policy* that “[p]ersons who allege harassment ... by a Member can seek resolution under this *Policy* or choose another option for resolving harassment issues, including ... complaints to the Integrity Commissioner under the Members *Code of Conduct...*,” Ms. Nokleby is incorrect in asserting that I do not have jurisdiction to deal with this complaint. If a complaint had also been made under the *Policy*,

I might have deferred to the process set out in it. In any event, given the 2022 amendments to the Act, I also have authority to refer a complaint to an alternative dispute resolution process (including mediation, which is one of the mechanisms for resolving a complaint under the *Policy*), as well as the ability to make findings about contraventions of the *Code* (which is the equivalent to arbitration under the *Policy*), and in all events the final decision about any discipline arising from a complaint under either process rests with the Assembly itself.

Turning to the substance of the complaints, in my judgment most of Ms. Nokleby's communications do constitute "political rhetoric". Criticism is the essence of accountability, and strong language is frequently used in political discourse.

However, the characterization of a communication as political rhetoric does not prevent it from being inappropriate or harassing (section 3 of the *Code*), or eroding the integrity of the Legislative Assembly and its Members (section 2 of the *Code*). Both the *Code* and the *Policy* recognize that there are limits to the appropriateness of actions and communications by Members. Further, the fact that certain words or phrases have been determined to just be political rhetoric and not unparliamentary or inappropriate in particular circumstances does not mean that those same words or phrases would always be acceptable in all contexts.

A communication may constitute harassment if it is demeaning or derogatory, belittles or causes personal humiliation or embarrassment, insinuates unlawful conduct or bad faith, or has no factual basis or without care to be accurate. Harassment may occur from one particular communication or from a series or course of communications. The test is objective; a communication is not harassment just because a person objects to it.

Although I have considered each of the communications about which Mr. Thompson complains, as well as Ms. Nokleby's explanation, I do not propose to comment on them individually. Taken as a whole, I fully understand why Mr. Thompson is irked by the content and tone of Ms. Nokleby's criticisms, and appreciate his attempts to find ways to respond to her concerns. On the other hand, while in my judgment not all of Ms. Nokleby's communications cross the line from acceptable political rhetoric so as to constitute harassment, I agree with her recognition that there can be legitimate criticisms of some of her communications, and that she needs to continue to work on her "direct and to-the-point manner" of communicating and carefully consider in advance the effect of her choice of words and tone.

Apart from whether Ms. Nokleby's communications with or about Minister Thompson or the Government's policies constitute harassment, in my judgement there is also a concern about the impact of those communications on the integrity and honour of the Legislative Assembly and its Members. The Legislative Assembly of the Northwest Territories operates on a consensus model—there isn't a "Government" and an "Opposition". While Members may

certainly disagree with actions taken by the Executive, there is a need for Members to express disagreement in an agreeable manner, recognizing that all Members are there doing their best to serve the people of the NWT. In saying this, I do not minimize the right of each Member to articulate their views on issues of importance to them and to their constituents.

I am also aware of the challenging context in which this issue has arisen. About one year into the Assembly's current term, the Assembly removed Ms. Nokleby from Cabinet, which understandably would affect her view of the Executive's subsequent performance and how she expressed those views. The Assembly vacated the seat of another Member whose behaviour was disruptive. And the pandemic has affected the operations of the Assembly and impeded the formation of personal and working relationships among Members which are so essential to the good functioning of the House despite disagreements about what needs to be done and how. The Assembly is just on the cusp of a general election, and one can hope that the next Assembly will be able to set a different tone.

In considering at some length how to deal with this complaint, I have decided to dismiss it pursuant to each of paragraphs 102(a)(ii), (iv) and (vi) of the Act:

- (ii) there are insufficient grounds to warrant an inquiry;
- (iv) a contravention of ... the Code of Conduct was ... committed ... by reason of an error in judgment made in good faith;
- (vi) the public interest would not be served if the complaint proceeded to an inquiry before a Sole Adjudicator.

As required by section 103(2), these are the reasons I have made this decision: The facts are known, and there is no dispute about them. An inquiry (either before me or before a Sole Adjudicator) is not necessary to establish the facts or address the issue. I am satisfied that Ms. Nokleby made an error of judgment in the content and tone of some of her communications, but did so in good faith. In any event, it would not be in the public interest to incur the expenditure required for an inquiry before a Sole Adjudicator, which Mr. Thompson specifically stated in his complaint that he was not seeking.

Although section 102(2)(b) of the Act would allow me to refer the matter to an alternative dispute resolution process (which includes mediation), that would not be practical at this point given that this Assembly is about to be dissolved for the general election. If, however, Mr. Thompson and Ms. Nokleby were to be re-elected, I would encourage them to voluntarily enter a form of mediation to mend their relationship so that each may serve their constituents and all the people of the NWT to the best of their abilities (even as they continue to disagree on various issues).

It would also be helpful for the new Assembly to have a workshop for all of the Members (newly elected or returned) about appropriate behaviour and communication skills expected

of them as they serve the people of the NWT. Particular focus should be given to the use of social media, which by its nature is prone to the quick quip and cutting comment, rather than thoughtful analysis based upon actual facts.

All of which is respectfully submitted this 15th day of September 2023 by:



David Phillip Jones, K.C.
Integrity Commissioner for the NWT Legislative Assembly

Copies to: Ms. Katrina Nokleby, MLA c/o Ms. Alyssa Holland
 Hon. Shane Thompson, MLA