

December 31, 2021

Our File No. 5758-11

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 Board of Management alleging that Mr. Jackie Jacobson, MLA for Nunakput, was in a conflict of interest and breached the Members' Code of Conduct

This is my report pursuant to section 102 of the *Legislative Assembly and Executive Council Act* (the "Act").

BACKGROUND

Mr. Jackie Jacobson is the Member of the Legislative Assembly for Nunakput.

Mr. Jacobson is also a member of the Assembly's Board of Management (the "Board"), which is composed of the Speaker, two Executive Council Members, and two regular Members of the Assembly.

The Board held meetings from August 23 to 25, 2021. Mr. Jacobson was travelling at that time, so he attended an *in camera* session of the meeting on August 24, 2021 by telephone.

That *in camera* session included a discussion of two reports prepared by Quintet Consulting Corporation with respect to (a) work place issues in the Clerk's Office, and (b) an investigation into four complaints alleging inappropriate conduct by the Clerk of the

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Legislative Assembly. The reports resulted from very public allegations made by Mr. Steve Norn, MLA for Tu Nedhé-Willedeh and others.¹ In addition, the *in camera* session included a briefing and privileged legal advice from the Assembly's Law Clerk about an inquiry by a Sole Adjudicator into a separate and unrelated complaint about Mr. Norn, which Mr. Norn through his lawyer had publicly challenged on the basis of conflict of interest and institutional bias.

The Board made unanimous decisions about how to proceed. Mr. Jacobson participated in the discussions, and did not dissent from those decisions.

Given the sensitive nature of the personnel and legal issues, and concerns about previous leaks of confidential information, members of the Board were expressly cautioned to take great care with respect to the receipt of the information.

A short time after this session ended, the Law Clerk received an unsworn version of an affidavit to be sworn by Mr. Jacobson which was to be used by Mr. Norn's counsel in support of Mr. Norn's challenge to the Sole Adjudicator's inquiry. The content of the affidavit advanced essentially the same concerns that were addressed in the Quintet Reports.² Mr. Jacobson swore his affidavit the next day.

THE BOARD'S COMPLAINT

The Board was concerned that Mr. Jacobson had aligned himself with Mr. Norn and had not disclosed that conflict of interest to the Board, and continued to participate in the Board's proceedings which included confidential and privileged legal advice and communications with respect to that very matter.

The Board was also concerned that Mr. Jacobson's conduct violated the *Members' Code of Conduct* (the "Code"), which binds all Members. Specifically, the Board alleged that Mr. Jacobson had violated the following provision of the Code:

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

¹ Quintet dismissed Mr. Norn's complaint against the Clerk as being unfounded.

² The Sole Adjudicator held that the matters were entirely separate, and dismissed Mr. Norn's challenge to the inquiry's jurisdiction.

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bring the integrity of their office or of the Legislative Assembly into disrepute.

The Board noted that the Commentary to the Code provides as follows:

A Member's integrity is fundamental to maintaining public confidence both in the individual Member and in the Legislative Assembly as an institution.

The Board also referred to section 75 of the Act:

75. Each member shall

- (a) comply with the provisions of this Act and the Code of Conduct;
- (b) perform the member's duties of office and arrange his or her private affairs in such a manner so as to maintain public confidence and trust in the integrity, objectivity and impartiality of the member,
...
- (e) in all other respects, act in a manner that will bear the closest public scrutiny.

The Board submitted that by supporting Mr. Norn's application to disqualify the Sole Adjudicator's inquiry, Mr. Jacobson attacked the very process the Board was responsible to oversee. He should not have provided the affidavit to Mr. Norn's legal counsel.

In sum, the Board said that Mr. Jacobson violated both section 75 of the Act and the Code.

MR. JACOBSON'S RESPONSE

Mr. Jacobson responded to the Board's complaint as follows.

He and his wife were travelling home from Edmonton on August 23, 2021. They stayed that night at Fort St. John so that he would be able to call into the Board meeting the following morning. On August 24, he called into the Board meeting by telephone.

After the Board meeting had concluded in mid-afternoon and they had started to leave Fort St. John to continue on their journey, Mr. Jacobson received a call on his cell phone from someone whose identity he cannot now recall from the office of Steven Cooper, legal counsel

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for Mr. Norn, asking Mr. Jacobson to swear an affidavit. Mr. Jacobson refused, ended the call, and continued to drive north.

Shortly afterward and just before losing cell phone service, Mr. Jacobson received a telephone call from Steven Cooper. Mr. Cooper told him that he had to swear an affidavit describing an incident which Mr. Jacobson had witnessed between the Clerk of the Assembly and Minister Thompson, and if he did not provide the affidavit, he would be subpoenaed and would have to come to Yellowknife for the hearing before the Sole Adjudicator. Mr. Cooper also told him that the affidavit would be confidential and would only be seen by the Sole Adjudicator.

The prospect of having to go to Yellowknife during the COVID-19 outbreak caused Mr. Jacobson stress. In addition, he was also grieving the recent death of his stepfather and needed get home to attend to funeral arrangements, so couldn't go to Yellowknife. So Mr. Jacobson decided to tell Mr. Cooper about the incident he had witnessed.

Not long afterwards, at about 5:15 p.m. Pacific Daylight Time, when they neared Wonowon, B.C., Mr. Jacobson received the draft affidavit from Mr. Cooper. Because he was anxious and stressed, Mr. Jacobson did not read it himself, but asked his wife to do so. She said it contained the answers he had given to Mr. Cooper during the earlier telephone call. Mr. Jacobson approved its contents. They continued on their drive. The next day, when they were in Whitehorse, Mr. Jacobson swore the affidavit by video conference.

In his response, Mr. Jacobson clarified that he did have serious concerns about the affidavit. It was prepared by Mr. Cooper. While the details about the incident are accurate, the affidavit does not reflect his views about the Legislative Assembly or the staff who support its work. Nor does the tone of the affidavit reflect the positive working relationship he wishes to have with his colleagues, nor his respect for the Legislative Assembly as an institution. He regrets the difficulties which the affidavit has caused. He would not have signed it if he had had more time to review and consider its contents, if he had not been under serious personal stress, and if Mr. Cooper had not put pressure on him.

Mr. Jacobson emphasized that he understands the obligations of Members to behave ethically, to avoid conflicts of interest, and to live up to the Members' Code of Conduct.

Mr. Jacobson says he has found the events of the past months to be very painful. He wishes to move forward in a positive and productive way with his colleagues at the Assembly, and to focus on serving his constituents and the people of the Northwest Territories.

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REPLY BY THE BOARD OF MANAGEMENT

In reply, the Board noted that the Law Clerk had received the unsworn version of Mr. Jacobson's affidavit at 4:38 p.m. Mountain Daylight Time, not long after the Board's meeting had concluded that day. The Board noted that it was possible that Mr. Jacobson may only have been contacted by Mr. Cooper's office after the meeting and that the affidavit could have been prepared in a very short time frame.³ The Board was content to leave the matter to my judgment.

The Board reiterated its concerns about the wisdom of a Board Member challenging the very process established by the Board and the Legislative Assembly to address matters involving the conduct of a Member (Mr. Norn).

The Board was also troubled by the fact that many aspects of this matter had inappropriately been made public, contrary to the explicitly confidential nature of the communications involved.

SECTION 102(1) OF THE ACT

Section 102(1) of the provides as follows:

- 102(1) After conducting an investigation into the complaint, the Integrity Commissioner shall submit to the Speaker, the member or former member complained of and the complainant, a report, with reasons, advising that the Integrity Commissioner
- (a) is dismissing the complaint, where the Integrity Commissioner has determined that
 - (i) the complaint is frivolous or vexatious or was not made in good faith,
 - (ii) there are insufficient grounds to warrant an inquiry,
 - (ii) the complaint does not disclose a contravention of this Part or the Code of Conduct,

³ Alternatively, the affidavit could have been drafted by Mr. Cooper prior to his telephone calls to Mr. Jacobson. It is understood that his office prepared at least one other affidavit from another person about the same incident, which might have provided the material for a draft.

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- (iv) a contravention of this Part of 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; or
- (b) is directing that an inquiry be held before a Sole Adjudicator.

DISPOSITION OF THE COMPLAINT

Having considered the information received during the investigation, I have concluded that it is appropriate to dismiss the complaint for the following reasons, rather than to send it on to a Sole Adjudicator.

First, I accept Mr. Jacobson's chronology that Mr. Cooper or someone in his office contacted Mr. Jacobson at some point *after* the end of the Board meeting on August 24 to request him to provide the affidavit or be subpoenaed. Given this timing, Mr. Jacobson would not have been in a conflict of interest position during the Board's meeting when he was present, heard the discussion and the legal advice that was given, and supported the decisions which the Board made: section 102(1)(a)(ii).

Secondly, it is necessary to consider whether Mr. Jacobson's subsequently providing the affidavit in question raises concerns about whether his actions met the standards contained in the Code. In my view, it undoubtedly would have been better for Mr. Jacobson not to have been involved in supporting an attack on the very process which he had been part of to deal with the issues involving Mr. Norn. It also would have been better for Mr. Jacobson not to have felt pressured into making a decision about this. And he should have taken independent legal advice about both the request to provide the affidavit, and its contents and tone, particularly because of his membership on the Board. Nevertheless, I am satisfied that Mr. Jacobson's actions, regrettable as they were, were an error of judgment made in good faith: section 102(1)(a)(iv). This is a sufficient basis to dismiss the complaint.

Finally, taking into account the painful context of the events involving Mr. Norn, in my view the public interest would not be served if the complaint proceeded to an inquiry before a Sole

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Adjudicator: section 102(1)(a)(vi). This is a separate and additional basis for deciding to dismiss the complaint.

Accordingly, I dismiss the complaint.

NEXT STEPS

I am sending a copy of this report to Mr. Jacobson (via his legal counsel) and the Board.

In addition, section 102(2) of the Act requires the Speaker to deliver a copy of this report to each member of the Legislative Assembly and to the Clerk, and section 102(4) requires the Speaker to lay a copy of the report before the Legislative Assembly at the earliest opportunity.

POSTSCRIPT

There are important lessons to be learned from all of this.

First, every Member has the obligation to avoid conflicts of interest and to live up to the standards contained in the Code to which each Member has subscribed. The Integrity Commissioner is always available to provide prior advice if there is any question or concern about the propriety of a Member's situation or contemplated action. Careful prior thought and prevention is enormously better than trying to deal with matters after the fact.

Second, the Code establishes the expectation that Members will meet the high standards which they themselves have set and are committed to observe. The overriding obligation is for a Member to "perform the member's duties of office ... so as to maintain public confidence and trust in the integrity, objectivity and impartiality of the member".

In my view, integrity includes the duty of loyalty not to undermine decisions duly made by the Assembly, the Board, or Committees. While Members will quite properly disagree and have different views on many subjects, they must be committed to the rules which govern the Assembly and the decisions it makes.

Integrity also includes the duty of Members to keep confidential discussions strictly private and not to disclose confidential documents to any third party (including the press).

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Third, the proceedings involving Mr. Norn over the last many months were disruptive and difficult for all Members. These unhappy events have been concluded. It is now time for all Members to work together to represent their constituents and advance the interests of the people of the Northwest Territories.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'D. Jones', is written over a light blue horizontal line.

David Phillip Jones, Q.C.
NWT Integrity Commissioner

cc: Mr. Jackie Jacobson, MLA c/o Ms. Alyssa Holland (legal counsel)
The Board of Management