

**NORTHWEST
TERRITORIES**

**CONFLICT OF
INTEREST COMMISSIONER**

Gerald L. Gerrand, Q.C.

**ANNUAL REPORT
2009**

ANNUAL REPORT 2009
OF
THE CONFLICT OF INTEREST COMMISSIONER
FOR THE NORTHWEST TERRITORIES

This is my Annual Report for the calendar year 2009 as mandated by Section 99 of the *Legislative Assembly and Executive Council Act*, S.N.W.T. 1999, c. 22 (“the Act”). Section 99 of the Act does not specifically fix a date prior to which the Annual Report must be filed. I have attempted to finalize and file the Annual Report well prior to the end of the calendar year.

This Report is prepared in accordance with the several requirements set forth in Section 99.

Re-appointment as Conflict of Interest Commissioner for the Northwest Territories

By motion of the Legislative Assembly of the Northwest Territories, I was re-appointed Conflict of Interest Commissioner effective December 1, 2009.

I look forward to continuing my association with the Members of the Assembly for a further four-year period and working with them in ensuring that the Northwest Territories is served by Members who are free of conflicts of interest.

Disclosure Process

Each Member of the Legislature is required to file annually with me a disclosure statement revealing all of his or her financial and property affairs. This disclosure

statement must be filed within sixty days after the commencement of the first session of the Legislative Assembly after the election of the member and on the anniversary of that date in subsequent years (section 87(1) of the Act). By reason of the provision for fixed election dates, the timing for filing members' disclosure statements is early December in each calendar year.

Filing of the disclosure statements was carried out by each member within the time required for the year 2009, with one exception. Michael McLeod, the Member for Deh Cho, was granted a seven-day extension by me pursuant to Section 97 of the Act, and Mr. McLeod duly filed his disclosure statement within the seven-day extended period.

It is my obligation to review the disclosure statements filed by the members and satisfy myself that the statements are complete and in accordance with the Act.

Meeting Between Conflict of Interest Commissioner and Members

Section 88 of the Act provides as follows:

“Meeting with Conflict of Interest Commissioner

88. After filing a disclosure statement, a member shall, as soon as is reasonably practicable, meet with the Conflict of Interest Commissioner to ensure that adequate disclosure has been made and to obtain advice from the Conflict of Interest Commissioner with respect to the member's obligations under this Part.”

A meeting with each member was held in accordance with the above provision during February of 2009. Each meeting took place at my office in the Legislative Building in Yellowknife and I satisfied myself that each member had made adequate disclosure as required by the Act and understood their obligations under the Act.

Public Disclosure Statements

The Commissioner is required to prepare a public disclosure statement respecting each member as set forth in Section 89 of the Act. A practise has evolved whereby this public disclosure statement is maintained at the Legislative Library in Yellowknife.

A public disclosure statement respecting each of the members was filed at the Legislative Library for the year 2009, as well as supplementary disclosure statements where appropriate.

A properly operating disclosure system is the cornerstone to the avoidance of conflicts of interest in public service. Public confidence in the operation of our public institutions is enhanced when the potential personal interest of elected decision makers is revealed in a detailed and transparent process, overseen by an independent functionary. Steps can then be taken to avoid a conflict of interest on the part of a member. This system has again worked appropriately for the year 2009 in the Northwest Territories.

Allegation by Member Jane Groenewegen that Premier Floyd Roland received and accepted accommodation allowances to which he was not entitled, thereby breaching the provisions of Section 86 or alternatively, Section 75, of the *Legislative Assembly and Executive Council Act*

By letter dated March 5, 2009, Jane Groenewegen, MLA for Hay River South, requested that I investigate the conduct of Premier Roland respecting his temporary accommodation benefits.

After duly investigating this complaint, I concluded that Premier Roland was not in breach of the two sections of the Act referred to in the heading of this topic. It was my view that each member of Executive Council was entitled to reimbursement to set maximums for housing costs for temporary accommodation while residing in Yellowknife pursuant to specific provisions of the Ministerial Benefits Policy. I further concluded that Premier Roland's particular family living arrangements did not alter his entitlement to these benefits.

In the circumstances, I dismissed the complaint pursuant to Section 102 (1)(a) of the Act.

Alleged Breach by Premier Floyd Roland of Section 75 of the *Legislative Assembly and Executive Council Act* in respect of the Relationship he engaged in with a person employed by the Legislative Assembly of the Northwest Territories as Principal Clerk, Committees

On February 16, 2009, six members of the Legislative Assembly for the Northwest Territories requested that I carry out a formal investigation and provide a report respecting certain conduct of Floyd Roland, Member for Inuvik Boot Lake and Premier of the Northwest Territories. The conduct complained of related to Premier Roland's relationship with a female employee of the Legislative Assembly of the Northwest Territories, who at all material times served the Assembly as Principal Clerk, Committees.

Shortly following February 16, 2009, I determined I would carry out an investigation as requested. Following the completion of preliminary requirements, I interviewed all persons who might have knowledge of the events in question, including the six complainants, the Premier and the Principal Clerk, Committees.

I finalized my report of my investigation on May 25, 2009. It is difficult to summarize my report of 14 pages into a few words. However, in essence, I found that in not revealing the intimate relationship with the Principal Clerk, Committees, in a timely manner, Premier Roland had not arranged his private affairs in such a manner as to maintain public confidence and trust in the integrity, objectivity and impartiality of the member, thereby breaching Section 75 of the Act.

My report required me to interpret the precise meaning of Section 75 of the *Legislative Assembly and Executive Council Act* (“the Act”). Commencing at page 9 of my report, I expressed the following view:

“Utilizing the principles of interpretation of statutes and having particular regard to the words used and not used in Section 75 of the Act, I have concluded the mischief which Section 75(a) seeks to avoid is not limited to improper financial manipulations, but includes conduct of an ethical nature if that conduct impairs public confidence and trust in the integrity, objectivity or impartiality of the member. Any other interpretation would render Section 75(a) superfluous in my view.

Members may choose to engage in conduct which will, of itself, not be considered a breach of the provisions of Section 75(a). The Act is not intended as a code for moral conduct. In my view, there must be a nexus between the conduct in question and the Member’s obligations to the Legislative Assembly and its proper functioning.”

I directed an inquiry be held before a Sole Adjudicator regarding Premier Roland’s conduct pursuant to Section 102(1)(b) of the Act.

The Honourable Ted Hughes was selected as the Sole Adjudicator. He was duly appointed by the Commissioner on the recommendation of the Board of Management pursuant to Section 103(1) of the Act. Formal hearings were conducted by the Sole

Adjudicator extending over a number of days. Evidence was given under oath by all persons having a knowledge of or personal interest in the subject matter of the Hearing.

In a 38 page disposition report dated October 28, 2009, Sole Adjudicator Hughes arrived at factual and interpretive conclusions respecting the conduct of Premier Roland, which conclusions were not at variance with those arrived at by myself in my report of May 25, 2009.

Sole Adjudicator Hughes concluded that, notwithstanding the contravention of the provisions of the Act, the complaint should be dismissed because the contravention was committed by Premier Roland by reason of an error in judgment on the part of Premier Roland made in good faith as contemplated by Section 106(1)(a)(ii) of the Act. In arriving at this conclusion, Sole Adjudicator Hughes reviewed in detail the factual events affecting the life of Premier Roland during the latter months of 2008 and concluded that Premier Roland's error in judgment was due, at least in part, to the pressure of external events and was made in good faith.

Opinions and Advice

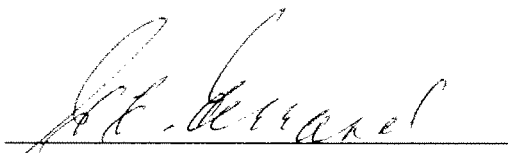
During the course of the year which is the subject of this report, I provided advice to several of the Members of the Assembly. I am pleased that Members seek my opinion on matters that may give rise to future conflict of interest problems if not reviewed at an early date with me.

I have had the assistance of many employees of the Legislative Assembly in arranging for and carrying out my visits in 2009 to the Legislative Assembly. This assistance has been

cheerfully given for which I express my gratitude and thanks.

All of which is respectfully submitted.

Dated this 17th day of August, 2010.

A handwritten signature in cursive script, appearing to read "G. L. Gerrand", is written over a horizontal line.

Gerald L. Gerrand, Q.C.
Conflict of Interest Commissioner