

16 July 2020

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

Dear Mr. Speaker:

Investigation into Complaint by Jackie Jacobson, MLA against Minister Diane Thom and Premier Carolyn Cochrane alleging breach of the Members' Code of Conduct

On Friday, June 26, 2020, I received an undated written complaint from Jackie Jacobson, MLA alleging that Minister Diane Thom, MLA and Premier Carolyn Cochrane, MLA had breached the Members' Code of Conduct..

As required by section 101 of the *Legislative Assembly and Executive Council Act* (the "Act"), I gave notice to the three Members that I would conduct an investigation into the complaint. I have conducted my investigation, and this is my report to you and the three Members pursuant to section 102 advising that I have dismissed the complaint for the reasons set out below.

Section 102(2) requires you to deliver a copy of this report to each member of the Legislative Assembly and to the Clerk. Section 102(4) requires you to lay a copy of the report before the Legislative Assembly at the earliest opportunity.

The Complaint letter

Mr. Jacobson's complaint letter is attached as Appendix A to this report.

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Although the complaint is marked "Confidential", the media received it a day before I did, were asking questions about it, and published the document in its entirety. When I asked Mr. Jacobson about this, he said he had not given the document to the media, but a copy of it had apparently been removed from his office in the Legislative Assembly without his knowledge. He agreed that there was no reason to continue to treat the document as confidential.

Much of the content of the document appears to be directed to someone other than me. It appears to be based on Mr. Jacobson's remarks to a meeting of the Standing Committee on Accountability and Oversight that took place on May 26, 2020. Nevertheless, one can distill two complaints.

First complaint

Mr. Jacobson alleges that a formal complaint against Ms. Thom was submitted on April 10, 2020 to Bruce Cooper, the Deputy Minister of Health and Social Services.

I have recently been made aware of a formal complaint filed against Diane Thom, our Deputy Premier and Minister of Health and Social Services. The complaint was made on April 10, 2020, and was submitted to Bruce Cooper, the Deputy Minister of Health and Social Service.

Mr. Jacobson says that the complaint alleged that Minister Diane Thom violated both the COVID-19 public health order and the Members' Code of Conduct. Mr. Jacobson describes the specifics of the complaint as follows:

The specifics of the complaint are as follows. In March, 2020, Ms. Thom attended a party at her friend's cabin near Airport Lake in Inuvik. No less than 10 people attended the party with individuals that were supposed to be in self-quarantine themselves - a violation of the Public Health Order prohibiting such gatherings. The complaint also alleges that Ms. Thom was seen driving a skidoo while under the influence of alcohol the same evening.

Second Complaint

Mr. Jacobson also alleges that Premier Cochrane denied that a formal complaint had been made:

Even though you [apparently referring to those present at the meetings of the MLA Caucus and the Standing Committee on Accountability and Oversight] were made aware of these allegations, as you recall ... in both instances Premier Cochrane denied that a formal complaint had been made.

The truth is that not only was a formal complaint submitted on April 10, 2020 to Mr. Cooper but also subsequent complaints were submitted to Glen Rutland, Deputy Clerk, Lesa Semmler, ... MLA for Twin Lakes and to the Speaker.

The Premier's choice to willfully mislead her caucus colleagues and the Standing Committee on Accountability and Oversight is extremely unfortunate. She may try to argue she was not aware of a complaint but text messages between myself and Ms. Thom prove that not only was the Premier aware of the complaint but actively instructed Ms. Thom to downplay the seriousness of the event in an effort to save face publicly.

The Members' Code of Conduct

The Legislative Assembly has adopted a Code of Conduct for its Members.

Amendments to the *Legislative Assembly and Executive Council Act* (the "Act") that came into force on October 1, 2019 provide that the Code of Conduct continues in force from session to session until amended or replaced (section 74.1), and also conferred jurisdiction on the Integrity Commissioner to investigate a complaint that a Member has contravened any provision of the Code of Conduct (section 100).

The Code of Conduct and accompanying *Guide* are reproduced in Appendix B.

The Code provision which would be relevant to both of Mr. Jacobson's complaints reads 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 their conduct does not bring the integrity of their office or of the Legislative Assembly into disrepute.*

The commentary in the *Guide* provides as follows:

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.

The Act

Section 101 of the Act requires the Integrity Commissioner to investigate a complaint about a Member breaching the Code of Conduct.

Section 102 of the Act provides that the Integrity Commissioner may then either (a) dismiss the complaint, or (b) direct it to an inquiry by a Sole Adjudicator.

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,*
- (iii) *the complaint does not disclose a contravention of this Part or 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; or*

(b) is directing that an inquiry be held before a Sole Adjudicator.

(2) The Speaker shall deliver a copy of the report to each member of the Legislative Assembly and to the Clerk.

...

(4) The Speaker shall, at the first opportunity, lay a copy of the report before the Legislative Assembly.

Accordingly, my task is decide whether the complaints should be dismissed or referred to an inquiry by a Sole Adjudicator.

The Investigation

In the course of my investigation, I spoke and/or emailed with the following persons:

(a) Mr. Jackie Jacobson, MLA, the complainant

- Confirmed that he had not made a complaint about Minister Thom to Mr. Cooper, and he did not know who had made that complaint.
- Did not have personal knowledge about the events in March 2020 involved in the allegation that Minister Thom had breached a Public Health Order

or was seen driving a skidoo while under the influence of alcohol the same evening (the First Complaint).

- Provided a string of text messages between Grant (Coco) Thom and his wife, Diane Thom, which appear to be copied from Mr. Thom's mobile phone. Mr. Jacobson said that the text messages were sent to him by Mr. Thom. The first message is dated 10:35 AM on April 10, 2020 (Good Friday) and refers to events from the previous weekend.

[*Note:* This is not the event referred to in the First Complaint—namely, the allegation that Ms. Thom in March 2020 attended a party at her friend's cabin near Airport Lake in Inuvik where there were no less than 10 people present, including individuals that were supposed to be in self-quarantine themselves.]

- Received copies of the emails that Coco Thom sent to Lesa Semmler, Glen Rutland, and Speaker Blake, which he described as complaints.
- Understood that Coco Thom had subsequently submitted (separate) complaints to Lesa Semmler, the Speaker's Office, the Premier's Office and the Deputy Minister for Health and Social Services (Mr. Cooper).
- Took offence at what he perceived to be Minister Thom's and Premier Cochrane's effectively calling him a liar when they stated at the caucus meeting on May 26, 2020 and the Standing Committee on Accountability and Oversight that no formal complaint had been made about Ms. Thom, which he perceives impugned his honour as a Member (Second Complaint).
- Provided a string of subsequent text messages which he had received from Coco Thom on May 28, 2020 after Mr. Jacobson informed Mr. Thom of what had happened at the caucus meeting two days earlier. These text messages set out six "Allegations" about Diane Thom's behaviour, and are written in the style of a police charge sheet.
- Told me that he had not provided a copy of his complaint letter to the media, and said it had been taken from his desk in the Legislative Assembly building by some unknown person who must have given it to the press the day before he sent it to me.

(b) Ms. Diane Thom, MLA and Minister of Health and Social Services

- Described going to her cabin with two friends in April the weekend before Easter (April 3 to 5) to shovel snow, when a young relative and friends arrived asking to borrow gasoline for their skidoos, all maintaining a good separation while they had a beer. This is the event discussed in the string of text messages with her husband on the morning of April 10, 2020.
- On Thursday, April 9th, she received a call from Martin Goldney, Deputy Minister of the Executive Council, who had heard that there might be an issue. She also received a call from Bruce Cooper, her Deputy Minister, who told her a complaint might be made.
- That evening, she received a call from Premier Cochrane, who made it clear that if she had done something wrong she needed to own up to it. Ms. Thom asked Premier Cochrane if there had been a complaint; Premier Cochrane said no. Ms. Thom recognized that there might be a wrong perception about her activities that weekend; she discussed that concern with Premier Cochrane; and she began preparing a draft explanation that she was going to post on her Facebook page for her constituents.
- She did exchange text messages with her husband on the morning of April 10, 2020, which in part read as follows [spellings in original]:

[Diane Thom] Morning my dear. My DM called me to tell me that someone complaint about me. That day when Little Brian and his buddies showed up for gas. I dont need a lecture from you. Yes I know better and after the order is in place today things will change. I have a call at 11 then the media at 1:30-3:30 the im home tomm.

[Coco Thom] I didn't hear anything but someone in little brians crew should know to keep there fkn mouth shut cause they were doing the same thing.

Premier asked me to do a post. This is it. I cant post until after my media this afyernoon.

Friends - I want to address the serious allegations made to a senior deputy minister that I was out at my cabin last weekend partying, and that there were young people involved.

I can confirm that myself and two of my friends did go to my cabin for the day to shovel snow of my cabin decks. We went on separate snowmobiles and practiced social distancing, while travelling, shovelling off the decks and afterwards while relaxing and warming up in the cabin before heading home.

While we were shovelling, one of my cousin and three of his friends showed up looking to borrow gas as he was running low. I unlocked the shed and got out the five gallon Jerry Can I had. They were each on their own sleds and sat on them while my cousin gassed up and drank a beer. It is important to note they are all adults and were only in my yard for 15 minutes before they left. Myself and my friends were on my deck and my and my nephew and his friends were on their sleds in the yard.

I understand that as an elected official, and particularly the Minister of Health and Social Services during an Health Emergency, that my actions are under scrutiny and that sometimes the optics of a situation will lead to speculation on the part of residents. I will continue to follow the directions and orders of the Chief Public Health Officer, and am further modifying my behaviour in light of the orders made today banning all gatherings.

In closing, there was a very innocent explanation for what happened at my cabin last weekend.

I do realize, however, that we all need to be vigilant, and that bringing these concerns forward, so they can be addressed, was the proper thing to do.

I hope this explanation provides comfort that as Minister of Health and Social Services, I am not flaunting the rules and am doing my part to keep northerners safe from the Covid 19 virus.

Have a blessed Easter with your immediate household and remember to Stand Together by Staying Apart.

Diane

Holy Fk your gonna get roasted just stay in YK till this passes over lol

*Don't say I told you so
feeding the lions*

I need to prepare for a media right now. Im not reading your trxts till im done

just don't apologize yet lol

- Ultimately, because no complaint was ever received, and on advice from the communications people, she decided not to publish the explanation.
- She confirmed with Dr. Kandola, the Chief Public Health Officer, that there was no public health order in effect prohibiting indoor gatherings during the weekend of April 3 to 5. That order came into effect on April 10.
- She and her husband were having serious marital difficulties, and have since separated. He has sent her a series of accusatory text messages. Her husband has also telephoned and emailed or texted Lesa Semmler, Glen Rutland, and the Speaker about their marital difficulties and has wrongly alleged that she had breached public health orders. Her husband is very close to Jackie Jacobson, and had been best man at their wedding. Her husband is the source of the text messages which Jackie Jacobson provided to me.
- The special caucus meeting on May 26th was supposed to be private and confidential, with no staff present. Mr. Jacobson raised these same allegations. She explained what had happened, and stated that she had not breached any public health order.

(c) Premier Carolyn Cochrane, MLA

- Stated that she had from the outset of COVID-19 made it clear to all of her Ministers that they would be subject to close scrutiny during the pandemic, and it was essential that their behaviour be above reproach.
- Has no personal knowledge of the events referred to in the First Complaint.

- Martin Goldney, the Deputy Minister of Executive Council, on Thursday, April 9, 2020 made her aware that concerns were being raised about Ms. Thom's being at her cabin the first weekend in April with two friends shovelling snow.
- She spoke with Diane Thom later that evening, told Ms. Thom if she had done anything wrong she needed to own up to it. Received a description of the events from Ms. Thom, and discussed Ms. Thom providing an explanation on social media.
- She made inquiries and was satisfied that no mandatory public health order had been breached.
- No formal complaint has ever come across her desk. She has no knowledge about any formal complaint ever having been made to Deputy Minister Cooper or anyone else alleging that Ms. Thom had breached a public health order. If she had received such a complaint, she would have sent it to Justice for advice.
- She was present at the caucus meeting on May 26th because Cabinet was to make a presentation. During that meeting, Jackie Jacobson alleged that a complaint had been raised about Ms. Thom. Premier Cochrane told the Members present that no formal complaint had been filed about Ms. Thom; if so, she would have dealt with it. She also told Jackie Jacobson that if he had a problem, he should take it up with the Integrity Commissioner. Premier Cochrane also noted that the proceedings of caucus meetings are intended to be private and confidential.
- Premier Cochrane later became aware that Coco Thom had sent emails and text messages to Glen Rutland (the Deputy Clerk), Lesa Semmler (an MLA), and Sonny Blake (the Speaker). She noted that none of these three report to her.
- On June 25th, Premier Cochrane received an email from Eric Bowling, a reporter with the Inuvik Drum and NWT News/North at 6:35 PM indicating that he had earlier that day received a copy of the letter from Mr. Jacobson that Mr. Jacobson was intending to send to the Integrity Commissioner the following day, and asking for her comment on the allegations (Appendix C).

(d) Mr. Martin Goldney, Deputy Minister, Executive & Indigenous Affairs

- On Thursday, April 9th, received an email from the Regional Superintendent for the North Region (Peter Clarkson), forwarding an email from another employee (whose name had been removed) with rumours about Minister Thom's drinking and not sufficiently socially distancing. Rumours abound in small communities like Inuvik, so Mr. Goldney telephoned Mr. Clarkson for more information, who confirmed that there were just rumours, not a complaint.
- Mr. Goldney spoke with Bruce Cooper, the Deputy Minister of Health and Social Services, who had also heard some rumours from Health and Social Services staff, and was going to let the Minister and her advisor know.
- Mr. Goldney called the Premier and her Principal Secretary to make them aware of the rumours. At the time, there was some concern about the NWT's response to the public health issue, and there was also some publicity about the New Zealand Minister of Health having breached a mandatory isolation order. His advice to the Premier was to speak with the Minister, to find out from her what had transpired because rumours often are not accurate, and if there was an issue to deal with it head on.
- Later that day or evening, Mr. Goldney spoke again with the Premier, who had spoken with Minister Thom, who had given an explanation of the events, knew the source of the rumours, and was going to prepare a statement to post on social media.
- Mr. Goldney recalled seeing a draft statement the following day. He assumed it went out, but later learned that it had not.
- Shortly before May 26th when the Session was scheduled to start, he received a call from the Premier's Principal Secretary about a private caucus meeting where it was understood that Minister Thom was going to be confronted. Mr. Goldney was concerned about procedural fairness, whether the Minister might be ambushed; and also that caucus was not the appropriate forum for dealing with concerns about an MLA—there was a process for that. The Principal Secretary shared those concerns.
- Neither Mr. Goldney nor any staff was present at the caucus meeting the next morning (although the Principal Secretary normally would have attended). He understands that Minister Thom made a spirited defence

explaining the events and referring to her marital breakdown; and that the MLAs were satisfied.

- The next thing he heard was from the media that Mr. Jacobson was going to make a complaint to the Integrity Commissioner.
- Mr. Goldney confirmed that he has never received any complaint about the rumoured events. The only information he had was from the Regional Superintendent (Peter Clarkson), and it clearly just involved rumours.
- Mr. Goldney said the North is rife with rumours. There usually is another side to the story, and it would be unfair to act on unverified rumours. One would only act just on a rumour if there were an obligation to report the event in question (such as an allegation of mistreatment of a vulnerable person). Otherwise, one would need an actual complaint, which would be dealt with through established processes that treat everyone involved fairly.

(e) Mr. Bruce Cooper, Deputy Minister of Health and Social Services

- At about 11:30 AM on Thursday, April 9, Mr. Cooper received a call from the Acting CEO of the Health Region who had heard some scuttlebut that someone might be complaining about something the Minister did that was against the advice of the Chief Public Health Officer.
- Shortly afterwards, Mr. Cooper received a call from Martin Goldney, the Deputy Minister of Executive Council, who said that the Regional Superintendent in the Beaufort Delta had informed him that someone might be coming forward with a complaint about Ms. Thom's activities.
- Mr. Cooper checked in with the Minister to make her aware and learn the action plan if any. She was going to check with the Chief Public Health Officer about whether her activities had breached a public health order, and she contemplated posting something on her Facebook page explaining what had actually occurred.
- Sometime later, Mr. Cooper touched base again with the Minister. She had confirmed with the Chief Public Health Officer (Dr. Kami Kandola) that no public health order had been breached. She had talked with her husband about posting something on her Facebook page explaining what had actually occurred, but on the advice of the communications people had

decided not to do so. Mr. Cooper says the Minister took the issue very seriously, was appropriately concerned, and displayed integrity.

- Mr. Cooper confirmed that he had never received any formal complaint from anyone that Minister Thom had breached a public health order.
- Given that no formal complaint was received, and there was no issue about any public health order having been breached, Mr. Cooper was satisfied that no further action was required.
- Mr. Cooper also referred to the mechanism for making complaints about persons breaching public health orders, which is on the NWT Government's web page: <https://gov.nt.ca/covid-19/en/public-health-orders>. He was not aware of any complaint being received through this vehicle.

(f) Mr. Glen Rutland, Deputy Clerk of the Legislative Assembly

- Received a telephone call from Mr. Jacobson on May 10th about the Minister of Health and her husband, and wanted to have Mr. Thom call Mr. Rutland.
- Shortly afterwards, received a call from Mr. Thom, which lasted approximately half an hour, and was mostly related to Mr. Thom's concerns about his relationship with his wife. Although Mr. Thom said his wife may have breached a public health order, that was not his biggest concern, and Mr. Rutland is quite clear that Mr. Thom was not making a complaint to him about that. Mr. Rutland described Mr. Thom as being very emotional during the call.
- Subsequently, Mr. Rutland received two text messages from Mr. Thom. The first one (at 11:11 AM) referred to a conversation Mr. Thom apparently had had with Ms. Thom during which she had said she was going to call his workplace. The second one (at 11:40 PM) forwarded a text message Mr. Thom had sent to his wife offering to take a polygraph about her ethical behaviour and claim of abuse, saying he would go straight to CBC News "then Sonny, Glen and Tim can try to put that fire out".
- Two days later (May 12), Mr. Jacobson texted Mr. Rutland:

Hello Glen sorry to bother you this evening I need to know what's up with CoCo and Diane. He told me that he hasn't heard back from you yet. The longer you take to get back to him it's worrisome, it will get leaked out.

We need to control this to protect both not one.

To which Mr. Rutland responded:

Sorry Jackie, as far as I can tell, this is solely an issue between Diane and her husband and there is not really a role here for us.

- Later that evening, Mr. Thom texted Mr. Rutland (at 11:19 PM) as follows [spelling as in the original]:

Glen you said it would take a day for you to get back to me!! I said ok no problem I understand!! I just got a call from JJ showing me your text This is unbelievable 4 weeks not a word from her?? How is that normal in todays world in a marriage if you don't want to touch the marriage stuff no problem i get that but the un-ethical behaviour being in other peopkes homes drinking in places where people are quarantined with family small kids!!! Come on man you guys are circling the wagons for her You think im worried about self preservation think again you just don't want that tyoe of mess in female lead govt you think im not willing to talk or go ahead!! All your gonna let happen is her to come home start shit domestic violence and your contributing to it!!! Polygraphs and txt's don't lie they tell the truth I thought you were supposed to help me not abandon me!! I have her txt lieing about being in 2 diff places at the same time i have it you refuse to see review it then ill get my own lawyer abd go cival law suit and your gonna be named along with Sonny im shocked you guys tink this a joke. You been forwarned thank you for not helping an aboriginal man

- Mr. Rutland was not present at the caucus meeting; no staff were present.
- Mr. Rutland was present at a meeting of the Standing Committee on Accountability and Oversight on Tuesday, June 30th, when Mr. Jacobson raised an issue saying that his complaint letter to the Integrity Commissioner about Ms. Thom had been taken from his office and leaked to the media. Mr. Jacobson said that he had raised a similar issue before at another meeting (where Mr. Rutland was not present). Mr. Rutland

responded that such a matter should be reported to the Sergeant-at-Arms, and undertook to arrange a briefing for Members on procedures regarding locking and unlocking of MLA offices.

(g) Lesa Semmler, MLA

- Confirmed that Mr. Thom had called her on Sunday, May 11, 2020 (Mother's Day). She says that most of the call was about the Thoms' marital difficulties; she knew they were having problems. In the course of the call, Mr. Thom alleged that Ms. Thom had breached a public health order; she told him that the process for dealing with that would be to file a complaint with the Integrity Commissioner; she is clear that she did not understand that he was making a formal complaint to her or expected her to do anything about that issue.
- Later that day, Mr. Thom sent her an email which included forwarded copies of emails he had sent to his wife on May 10 and Speaker Blake on May 11 entitled "Marital Distress/Emotional Adultery/Separation/Divorce".
- Phoned Mr. Glen Rutland to make him aware of the call and the emails, and determined that this was a private matter that did not affect the Assembly, and nothing more needed to be done.
- Confirmed that Mr. Jacobson and Mr. Thom are very good friends, going back to their training days with the RCMP.
- Was present at the caucus meeting, but declined to describe what transpired there because those meetings are strictly private and confidential.
- She told Mr. Jacobson that she did not get a complaint from Mr. Thom, whom she described as just a disgruntled husband.

(h) Speaker Frederick Blake, Jr.

- Confirmed that he had received a very emotional phone call from Coco Thom in May. Mr. Thom was crying and upset that Ms. Thom was staying in Yellowknife and not going home; threatened to go to the media; asked Mr. Blake to "rein her in".

- Mr. Thom called a couple of more times, threatening to take down the Legislative Assembly for interfering with their marriage.
- Mr. Thom sent emails to Mr. Blake, Lesa Semmler, Glen Rutland which Mr. Blake says were just full of accusations.
- Mr. Blake called Ms. Thom to ask whether she needed help or counselling under the Assembly's assistance plan.
- Mr. Blake says that Mr. Jacobson brought up a whole bunch of things about Ms. Thom at the caucus meeting on May 26, but the members supported her.

(i) Grant (Coco) Thom

- Confirmed that he did not make a complaint to Bruce Cooper on or about April 10, 2020.
- Confirmed that he has no personal knowledge of who may have made such a complaint.
- Confirmed that he did speak by telephone, text message and email with Mr. Rutland, Mr. Blake and Ms. Semmler. He says he wrote these communications by himself, without assistance from anyone.
- Says that he regarded those communications as complaints, and they did nothing to assist him.
- Sent Jackie Jacobson copies of these communications, as well as copies of text messages and emails with Ms. Thom.
- Provided me with the string of text messages he had with his wife on April 10.

(i) Public Health Orders and Enforcement

- The Minister of Health and Social Services declared an NWT-wide Public Health Emergency on Wednesday, March 18, 2020, which gave the Chief Public Health authority to make a wide range of public health orders.

- The public health order banning indoor gatherings came into effect on Saturday, April 10 (a week after the snow-shovelling event at Minister Thom's cabin).
- The NWT Government's web page about the enforcement of Public Health Orders describes the process for Public Health Officers to enforce public health orders, including how to make a complaint: <https://gov.nt.ca/covid-19/en/public-health-orders>.

Conclusions from the Investigation

After considering all of the information I have received, I have reached the following conclusions:

1. The allegation that Ms. Thom violated the COVID-19 public health order prohibiting indoor gatherings cannot be sustained. That order did not come into effect until April 10. It had no application to events prior to that date (whether those events took place earlier in April, or in March).
2. There is no evidence that any complaint was made by anyone to a Public Health Officer responsible for enforcing Public Health Orders.
3. Neither Mr. Goldney nor Mr. Cooper received a complaint about Ms. Thom.
4. Mr. Rutland, Ms. Semmler, and Speaker Blake did not understand Mr. Thom's emails, text messages, or phone calls to them to be formal complaints about Minister Thom. None of these individuals is a Public Health Officer responsible for enforcing Public Health Orders.
5. Premier Cochrane's statement that no complaint had been received that Minister Thom had breached a public health order is accurate.
6. There is no evidence to substantiate the allegation that Ms. Thom was driving a skidoo (or any other vehicle) when intoxicated. The photo of her with a skidoo is just that—it does not establish anything about the level of her sobriety. There is no evidence that she was charged (let alone convicted) of any offence about driving under the influence of alcohol.

I am dismissing the complaint by Mr. Jackie Jacobson pursuant to section 102(a) of the Act for the following reasons:

- 102 (i) In my view, the complaint is vexatious and was not made in good faith. Mr. Thom's text messages and emails amply demonstrate this.
- 102 (ii) Given my conclusions above, there are insufficient grounds to warrant an inquiry by a Sole Adjudicator.
- 102 (iv) Any inappropriate behaviour by Minister Thom during the early stages of the pandemic was an error of judgment made in good faith. In late March and early April, there was a rudimentary appreciation of the seriousness of the Covid-19 pandemic, and the increasingly stringent measures which subsequently became necessary to prevent its spread in the NWT. One cannot use 20:20 hindsight to criticize social interactions which were not prohibited at the time.
- 102 (vi) In my judgment, even if there were some merit in the complaint, no public interest would be served for the complaint to proceed to an inquiry before a Sole Adjudicator. No inquiry is required in order to determine any further relevant facts. The public does not require further details of Mr. and Mrs. Thom's marital difficulties. There is no justification to spend the time, energy and money that would be involved in an inquiry.

Any one of these four grounds would on its own be sufficient to dismiss the complaint.

In making the decision to dismiss this complaint, I recognize and emphasize 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, it is not the purpose of the Code to be used as a political weapon of choice, let alone a weapon in the course of a marital breakdown. All persons making complaints have an obligation to be open-minded, inform themselves of the facts, not act on hearsay, and not act for ulterior purposes. MLAs—individually and as a group—have an obligation to work together in the Assembly so it can do its important work for the betterment of all the people of the Northwest Territories.

Yours sincerely,



David Phillip Jones, Q.C.
NWT Integrity Commissioner

Attachments: Appendix A
Appendix B

Mr. David Jones
Integrity Commissioner

Appendix A

300 Noble Building
8540 -109 Street Edmonton AB

T6G 1E6

Ph: 780-433-9000

CONFIDENTIAL

Dear Mr. Jones:

I write this letter to inform you of a significant matter concerning the conduct of one of our colleagues.

I have recently been made aware of a formal complaint filed against Diane Thom, our Deputy Premier and Minister of Health and Social Services. The complaint was made April 10, 2020, and was submitted to Bruce Cooper, the Deputy Minister of Health and Social Service.

The complaint alleges that Ms. Thom violated both the COVID-19 public health order and the Code of Conduct for the elected Members of the Legislative Assembly.

The specifics of the complaint are as follows. In March, 2020, Ms. Thom attended a party at her friend's cabin near Airport Lake in Inuvik. No less than 10 people attended the party with individuals that were supposed to be in self-quarantine themselves - a violation of the Public Health Order prohibiting such gatherings. The complaint also alleges that Ms. Thom was seen driving a skidoo while under the influence of alcohol the same evening.

All members of the Legislative Assembly swear an oath to live up to the highest standards of behavior and ethical conduct. We know that without accountability, those in positions of power can use their influence to escape the consequences of their actions. This government expected everyone to comply with its health measures, there were no exceptions given for the Minister. The fact she disregarded her own Order shows that she believes the rules do not apply to her.

As elected Members of this Assembly, I know that we are aware of these allegations – they were brought to your attention both in our caucus and later by the Standing Committee on Accountability and Oversight on May 26, 2020.

Even though you were made aware of these allegations, as you recall that in both instances Premier Cochrane denied that a formal complaint had been made. The truth is that not only was a formal complaint submitted on April 10, 2020 to Mr. Cooper but also subsequent complaints were submitted to Glen Rutland, Deputy Clerk, Lesa Semmler, and MIA for Twin Lakes and to the Speaker.

The Premier's choice to willfully mislead her caucus colleagues and the Standing Committee on Accountability and Oversight is extremely unfortunate. She may try to argue that she was not aware of a complaint but text messages between myself and Ms. Thom prove that not only was the Premier aware of the complaint but actively instructed Ms. Thom to downplay the seriousness of the event in an effort to save face publically.

It is important that we ensure this Assembly lives up to the high standards we have set for ourselves and acts in accordance with our principles, our Code of Conduct and as role models for our people. I have included for your reference and consideration copies of evidence that I received in Min. Diane Thom's own words as you can clearly see a draft of her public apology related to these events.

Therefore, I would like to recommend that an independent investigation, from outside the Northwest Territories, be retained to investigate these allegations against Min. Diane Thom without delay.

Sincerely,

Jackie Jacobson
Member of the Legislative Assembly for Nunakput

Appendix B

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Members' Accountability

Code of Conduct for Members of the Northwest Territories Legislative Assembly

Part 1: Statement of Commitment


1. As Members of the Legislative Assembly of the Northwest Territories, we acknowledge that we have accepted a responsibility to serve the people of the Northwest Territories. We seek wisdom, strength, courage, honesty and compassion from the people of the North, both from those who have built our past and from those who are shaping their future. As legislators elected to govern the Northwest Territories, we will do our utmost to:
 - Hear the voices of all that live in the Northwest Territories;
 - Preserve Indigenous Traditional Knowledge, languages and the traditions of the various cultures and bridge them with new ways to build a better future for people in the Northwest Territories;
 - Provide legislation, policies and services for the good of the people as individuals, families and communities;
 - Promote the equality and equity of all people of the Northwest Territories;
 - Distribute resources fairly and justly; and
 - Respect and honour our land and all its inhabitants.

Part 2: Principles

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 their conduct does not bring their 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.
4. Members must carry out their official duties objectively and without consideration of personal or financial interests, and must arrange their personal affairs so as to maintain the trust and confidence of the public.
5. In performing their official duties, Members must use public resources prudently and only for the purposes for which they are intended. Members of the Assembly shall not use, or allow the use of, public property or services for personal gain.
6. Members must give priority to their duties as a Member over all other duties and offices they hold and must dedicate themselves to fulfilling their duty to effectively represent residents of the Northwest Territories.
7. Members must take appropriate steps to protect the confidentiality of any personal information, personal health information, or other confidential information that comes into their possession.
8. This Code is not designed to be exhaustive, and there will be occasions on which Members will find it necessary to adopt more stringent standards of conduct in order to protect the public interest and to enhance public confidence and trust.

Part 3: Effect of the Code of Conduct

9. This Code of Conduct has a continuing effect except as amended or rescinded by resolution of the Legislative Assembly.

 [Guide to the Rules Relating to the Conduct of Members](https://www.ntassembly.ca/sites/assembly/files/code_of_conduct_guide.pdf)
(https://www.ntassembly.ca/sites/assembly/files/code_of_conduct_guide.pdf)

GUIDE TO THE RULES RELATING TO THE CONDUCT OF MEMBERS

A. Introduction

The Code of Conduct provides a set of rules to which Members must adhere pursuant to section 75 of the *Legislative Assembly and Executive Council Act*, S.N.W.T. 1996, c. 22. The purpose of the Guide is to assist Members of the Legislative Assembly of the Northwest Territories in understanding how the provisions of the Code of Conduct apply in particular circumstances.

The Guide to the Rules and amendments to it are approved by resolutions of the Legislative Assembly. This Guide therefore carries the full authority of the Legislative Assembly.

As with all complaints of failing to comply with Part 3 of the *Legislative Assembly and Executive Council Act*, a Member of the Legislative Assembly or any other person who has reasonable grounds to believe the Code of Conduct has been contravened may make a complaint to the Integrity Commissioner pursuant to section 100 of the Act. The process that follows the receipt of a complaint by the Integrity Commissioner, including dismissal of frivolous, vexatious or trivial complaints, is set out in sections 100 to 107 of the Act.

Responsibility for disciplining or censuring a Member of the Assembly lies with the Legislative Assembly itself, and is a fundamental aspect of the privileges enjoyed by the Legislative Assembly as a house of parliament. Neither the Code of Conduct nor this Guide impinges upon, restricts or narrows the Legislative Assembly's fundamental right to regulate its internal affairs. Any role assigned to the Integrity Commissioner is for the purpose of assisting the Legislative Assembly in exercising this authority.

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

B. Code of Conduct - Provisions and Commentary

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 their conduct does not bring the integrity of their office or of the Legislative Assembly into disrepute.

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.

3. 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.

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:

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

Harassment includes sexual harassment. Sexual harassment means any conduct of a sexual nature, including comments, gestures or physical contact, whether on a one-time or recurring basis, that might reasonably be expected to cause offence or humiliation. Examples of sexual harassment include:

- inappropriate or unwanted physical contact such as touching, patting or pinching;
- inappropriate enquiries or comments about an individual's sex life;
- comments, gestures, or practical jokes of a sexual nature that cause discomfort or embarrassment;
- demands for sexual favours; and
- sexual assault.

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*. 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.

4. Members must carry out their official duties objectively and without consideration of personal or financial interests, and must arrange their personal affairs so as to maintain the trust and confidence of the public.

Commentary

This section of the Code of Conduct reflects a Member's obligation to avoid conflicts of interests, to declare conflicts that cannot be avoided, and to ensure a Member's actions reflect a commitment to the public interest, and not a Member's own personal or financial interests. The specific obligations of all Members regarding conflicts of interest, contracts and financial matters, gifts and benefits, and disclosure are set out in Part 3 of the *Legislative Assembly and Executive Council Act*.

Members must comply with the provisions of the *Legislative Assembly and Executive Council Act* and any other statutes, regulations, Board of Management resolutions or decisions of the Integrity Commissioner relating to ethics and conflicts of interest. Where a Member is uncertain about their compliance with conflict of interest rules, a Member should seek the advice of the Integrity Commissioner.

Members must conduct themselves professionally in their dealings with staff and contractors of the Legislative Assembly. Where a personal relationship may exist beyond a Member's professional interactions with an employee or contractor of the Legislative Assembly, Members are expected to make appropriate disclosure of the relationship. What constitutes appropriate disclosure will depend on the circumstances. Where there is any uncertainty regarding the need for disclosure of such relationships, Members are encouraged to consult the Integrity Commissioner for advice.

It is inappropriate for a Member of the Legislative Assembly to use the privileges of their office to seek special benefits or treatment for friends or family members of the Member.

5. In performing their official duties, Members must use public resources prudently and only for the purposes for which they are intended. Members of the Assembly shall not use, or allow the use of, public property or services for personal gain.

Commentary

Members must not use government-issued credit cards or any other source of public funds for personal expenses or personal benefit. Members must also refrain from using Legislative Assembly or government property, including Legislative Assembly vehicles, for personal purposes.

In accessing any allowances or other Legislative Assembly resources to which a Member may be entitled, including a Member's housing allowance, Members must accurately and completely disclose all information relevant to establishing their entitlement. Members must not represent their personal circumstances in a way that would give access to benefits to which they are not entitled.

Personnel resources, including constituency assistants, contractors and Legislative Assembly staff, must only be used for purposes related to the conduct of a Member's duties as a Member of the Legislative Assembly. It is not acceptable for Members to use such public resources for private purposes.

6. Members must give priority to their duties as a Member over all other duties and offices they hold and must dedicate themselves to fulfilling their duty to effectively represent residents of the Northwest Territories.

Commentary

As is acknowledged in the Statement of Commitment, all Members have accepted a responsibility to serve the people of the Northwest Territories. In keeping with the seriousness of this responsibility, Members are expected to attend all sittings of the Legislative Assembly and all meetings of caucus and

standing committees of which they are a member, unless there are compelling reasons why they cannot attend.

While occasional absences may be unavoidable, chronic absences from sittings of the Legislative Assembly, caucus or committee meetings without a compelling explanation undermine the integrity and capacity of the Legislative Assembly. Failure to attend committee meetings may result in quorum not being achieved, impairing the committee's ability to conduct its important legislative work. For this reason, Members are expected to attend the entirety of each meeting where their presence is required, and to notify the Chair in advance if they will not be able to attend.

The Board of Management has recognized the following explanations for a Member's failure to attend a meeting of a committee, found at page 32 of the Members' Handbook:

- The absence is in the course of the Member's duties as a Member or Minister or as the Premier or Speaker;
- The absence is a result of the Member's illness or injury or due to bereavement;
- The absence is due to factors outside a Member's control (i.e. weather, road closure or state of emergency);
- The absence is due to personal reasons.

The Legislative Assembly also recognizes that a Member's caregiving obligations, such as caring for an ill or injured dependent, and reasonable absences related to a Member's maternity or parental leave are valid explanations for a Member's absence from the Legislative Assembly.

While the Legislative Assembly will not generally inquire into the substance of a Member's personal reasons for absence, if a Member is absent for six meeting days in a calendar year without a valid explanation, the Committee in question is expected to seek the Member's removal from the Committee in the Legislative Assembly in order to ensure the proper functioning of the Committee and its ability to carry out its work.

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| <p>7. Members must take appropriate steps to protect the confidentiality of any personal information, personal health information, or other confidential information that comes into their possession.</p> |
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Commentary

In the course of their legislative duties, Members may frequently be provided with confidential information. Such information may be received from constituents or as part of their work in the legislative process at the Legislative Assembly.

Constituent Information

Although the *Access to Information and Protection of Privacy Act* and *Health Information Act* do not apply to the Legislative Assembly or the offices of its Members, the Legislative Assembly recognizes the importance of protecting confidential information that may be received by a Member in the course of their legislative or constituent work.

Constituents and other members of the public may provide personal information to a Member as part of a request for assistance or other communication that may not be intended to be shared with a broader audience. Members must take care to obtain consent to collect, use, or disclose personal information or personal health information, and in all dealings with members of the public, must determine whether an individual agrees to share their information in confidence or in a public way.

Confidential Committee or Government Information

In consensus government, Members are frequently privy to expressly confidential and sensitive information through their work in caucus, standing committees, or in cabinet. Respect for the confidentiality of this information is critical to the Legislative Assembly's ability to conduct its business, and respect for such confidentiality is part of a Member's obligations under the Code of Conduct.

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| <p>8. This Code is not designed to be exhaustive, and there will be occasions on which Members will find it necessary to adopt more stringent standards of conduct in order to protect the public interest and to enhance public confidence and trust.</p> |
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Commentary

As elected representatives of the people of the Northwest Territories, Members hold a position of trust and authority. Public confidence in an individual Member and in the Legislative Assembly as an institution requires

that Members hold themselves to a high standard of conduct, in both their personal and professional lives. The Legislative Assembly may at times find it necessary to respond to a Member's conduct that is found to undermine public confidence and trust, even if the provisions of this Code and all applicable laws have been respected.

C. Enforcement of the Code of Conduct

The Code of Conduct is binding on all Members of the Legislative Assembly. Any person who believes on reasonable grounds that a Member has contravened the Code of Conduct may make a complaint to the Integrity Commissioner. The enforcement process set out in Part III of the *Legislative Assembly and Executive Council Act* applies to complaints regarding alleged Code of Conduct violations.

The Integrity Commissioner is responsible for conducting an initial investigation after a complaint is received. The Integrity Commissioner may then decide to dismiss the complaint or to direct an inquiry be held before a Sole Adjudicator. The decision is communicated in a written report, including reasons for decision, which must be tabled in the Legislative Assembly.

If the complaint is referred to a Sole Adjudicator, he or she must conduct an inquiry into the complaint and report their findings to the Speaker. Where the Sole Adjudicator finds the Member guilty of contravening the Code and does not dismiss it, for example as being a minor contravention or the result of inadvertence, the Sole Adjudicator can impose financial penalties, including a fine, restitution, compensation or costs, without requiring the approval of the Legislative Assembly.

The Sole Adjudicator also has the power to recommend a range of punishments to the Legislative Assembly. These punishments include, but are not limited to:

- A reprimand;
- A fine;
- An order to pay restitution or compensation;
- A suspension of the Member's privileges to sit in the Legislative Assembly;
- A declaration that the Member's seat is vacant.

The Legislative Assembly may choose to impose the punishment recommended by the Sole Adjudicator, or may reject the recommendation.

Appendix C

From: Eric Bowling [mailto:ericbowling8@gmail.com]

Sent: Thursday, June 25, 2020 6:35 PM

To: Caroline Cochrane; Caroline Cochrane MLA; [REDACTED]

Subject: Letter to Integrity Commissioner

EXTERNAL: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender's name and email address and know the content is safe.

Hello Caroline, Eric Bowling of the Inuvik Drum here. We received a letter from Jackie Jacobson that he intends to send to the Integrity Commissioner tomorrow.

The letter makes some serious allegations against you, including that you knew Deputy Premier Diane Thom was breaching her own Public Health order in March by being at a cabin with 10 people, including several that were supposed to be self-isolating.

It further accuses you of saying that no formal complaint was filed about the incident, but that one was in fact filed to Bruce Cooper on April 10 as well as to Glen Rutland, Lesa Semmler and Freddy Blake Jr. It also accuses you of instructing Mrs. Thom to "downplay the seriousness of the event in order to save face publically."

Lastly, it says Mrs. Thom wrote a draft apology, but best I can tell no apology was ever made public. Obviously we have to write a story on this, but I wanted to give you the opportunity to say your side of it.

My understanding is the letter will be made public tomorrow afternoon. Is there a phone number I could reach you at?

Thanks.

--
Eric Bowling
Reporter for the Inuvik Drum and NWT News/North
(867) 777 4545