

3 October 2023

Our File No. 5758-16

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 complaints that Ms. Katrina Nokleby, MLA breached the Members' Code of Conduct by returning to and remaining in Yellowknife after it was ordered to be evacuated in August 2023

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 COMPLAINTS

On August 26, 2023, I received two written complaints that Ms. Katrina Nokleby, MLA for Great Slave, had improperly returned to and remained in Yellowknife after it was ordered to be evacuated, thereby breaching the Members' *Code of Conduct* (the "Code").

I acknowledged the complaints, provided copies to Ms. Nokleby, and commenced an investigation. I asked Ms. Nokleby for a response by September 22nd, which I received.

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B. THE CODE AND THE GUIDE

The Legislative Assembly has adopted both the *Code* and the Guide to it. Both 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.

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.
- (6) Any punishment that the Integrity Commissioner recommends under paragraph (3)(c) must be the same as what the Sole Adjudicator may recommend under (a) paragraph 106(1)(b) for a member; and (b) paragraph 106(1)(c) for a former member.
- ...
- 106. (1) After conducting an inquiry, a Sole Adjudicator shall submit a disposition report, with reasons, to the Speaker, the member or former member complained of and the complainant, advising that
 - (a) the complaint is dismissed, where the Sole Adjudicator has determined
 - (i) that the complaint does not disclose a contravention of this Part or the Code of Conduct,
 - (ii) that a contravention of this Part or the Code of Conduct was minor or was committed through inadvertence or by reason of an error in judgment made in good faith, or
 - (iii) that the member or former member took all reasonable measures to prevent a contravention of this Part or the Code of Conduct;

- (b) the Sole Adjudicator has found the member to be guilty of contravening a provision of this Part or the Code of Conduct, and is recommending to the Legislative Assembly that one or more of the following punishments be imposed:
 - (i) a reprimand,
 - (ii) a fine in an amount not exceeding \$25,000 established by the Sole Adjudicator,
 - (iii) an order requiring the member to make restitution, in an amount determined by the Sole Adjudicator, to the Government of the Northwest Territories or to a public agency of the Government of the Northwest Territories, of any gain realized by the member or his or her spouse or dependent child by participating in a transaction in contravention of a provision of this Part,
 - (iv) an order requiring the member to pay compensation to any person for a loss suffered by that person as a result of the participation of the member or his or her spouse or dependent child in a transaction in contravention of a provision of this Part,
 - (v) a suspension for a period not exceeding 30 sitting days of the privileges of the member to sit in the Legislative Assembly,
 - (vi) a declaration that the seat of the member is vacant,
 - (vii) an order that the member pay costs in an amount determined by the Sole Adjudicator; or
- (c) the Sole Adjudicator has found the former member to be guilty of contravening a provision of this Part or the Code of Conduct, and is imposing one or more of the following punishments [which are the same as in the previous paragraph excluding a reprimand, a suspension, or a declaration that the seat be vacated—none of which would apply in the case of a former member].

D. SUMMARY OF THE SALIENT FACTS

Although there has been extensive media coverage of the events in question, the following are the salient facts from my investigation:

1. Ms. Nokleby is the Member of the Legislative Assembly for Great Slave.
2. On Wednesday, 16 August 2023, the Minister of Municipal and Community Affairs issued an Evacuation Order for Yellowknife, N'dilo, Dettah, and Ingraham Trail pursuant to section of the *Emergency Management Act* requiring

residents to evacuate by noon on Friday, 18 August 2023 because of wildfires threatening these communities.

3. Ms. Nokleby left Yellowknife on the night of Thursday, 17 August 2023, intending to evacuate to Alberta. However, she accepted an invitation to stay with the MLA for Monfwi in Behchoko.
4. Knowing that some individuals had remained in Yellowknife to assist, Ms. Nokleby emailed the Minister of Municipal and Community Affairs on Sunday, 20 August 2023 to ask how she could be added to the list of persons able to get through the Highway 3 roadblock:

Good evening,

Could I please be added to the list to be let through the Highway 3 roadblock north of Behchoko? I am currently couch surfing at Jane's with four cats and it is not a long term option. I have a truck, extensive field experience, my own NOMEX (fire retardant) coveralls and rainsuit, plus steel toes, pickaxes, etc. I want to volunteer but I also want to return to look in on the animals and houses of my constituents, many of whom are reaching out to me. Being in Yellowknife, in my own home, will enable me to better support them and others as they return home. I have enough food etc to support myself for several days until I am assigned a role with the volunteer group in an official capacity. I could also work with several of the contractors I know however they do not have the ability to bring me in without permission of the EMO.

Thanks in advance,

Katrina

5. The following day, Monday, 21 August 2023, the Minister (Hon. Mr. Thompson) had the following message sent to Ms. Nokleby:

Hello MLA Nokleby,

First responders are identifying which services are critical to ensuring the continuity of the current emergency response. Where contractors, volunteer organizations, businesses, GNWT departments, partner agencies, etc. have been identified as a critical service, they identify essential personnel and provide this information to the Emergency Management Organization (EMO). The EMO does not provide permission to specific individuals—this is because it is the contractors, partner agencies, etc. that determine who is essential to their operations during this period, not the EMO. In the event you volunteer or work for a contractor, and they choose to determine that your role/function is deemed essential, they are responsible to provide the EMO with updated information about their essential personnel.

All residents continue to be reminded via social media, news releases, and publicly available information that there is a mandatory evacuation order in place and that all residents should leave the impacted area and to not return.

Shane

6. Ms. Nokleby made contact with Ernest Betsina, Chief-Elect for N/Dilo with the Yellowknives Dene First Nation (“YKDFN”) to discuss her skills and volunteer as part of his team. On Wednesday, 23 August, 2023, Chief-Elect Betsina called Ms. Nokleby to inform her that she was “on the list”, which she understood meant she could legitimately return to Yellowknife in compliance with the direction provided by Minister Thompson. She returned to Yellowknife that evening, although the individual working the checkpoint had difficulty finding her name on the EMO list but nevertheless let her pass.
7. An Updated Evacuation Order was issued on Wednesday, 23 August 2023, which included the following direction pursuant to section 17(1)(h) of the *Emergency Management Act*:

1. All non-essential persons present within the community boundaries of Yellowknife, N’ dilo, Dettah, and in locations on the Ingraham Trail must immediately evacuate those areas.

It is an offence pursuant to Section 25 of the Act for a person to
(a) contravene this Act or any order made under this Act; or to
(b) interfere with or obstruct any person in the exercise of any power conferred or the performance of any duty imposed by this Act or any order made under this Act.

The Updated Evacuation Order was effective as of 7:00 p.m. on that day, and was to remain in place until the state of emergency had been terminated.

8. Ms. Nokleby spent Thursday, 24 August 2023 at home organizing her affairs.
9. On the morning of Friday, 25 August, 2023, there was media attention about Ms. Nokleby being in Yellowknife. She stated that she had followed the procedures, had not broken any rules, and had an essential role in supporting the Chief-Elect’s team. She also made some controversial observations about the state of the wildfires and the situation in Yellowknife, and was quoted as saying others should “jump through the hoops” and contact MACA like she did in order to get essential worker status to be able to return.¹

1. <https://www.nnsl.com/news/great-slave-mla-katrina-nokleby-returns-to-yellowknife-as-advisor-to-ndilo-chief-ykdfn-says-otherwise/>.

10. Later that day, Ms. Nokleby spent time with Chief-Elect Betsina at his home, discussing her role on his team. She says she told the Chief-Elect that she could not provide engineering advice because of her non-practising status, and that she would advise the regulator that she was not doing so. They surveyed fire risks on the community boundaries, identified homes that were occupied and the needs of the residents in those homes, and discussed the adequacy of sprinkler systems and fire smarting needs in the community. They discussed government and NGO supports available to evacuees in the south, including people she was utilizing to support her constituents and others who had reached out to her. She expected to continue this work the next day.
11. After dinner on Friday, August 25, Ms. Nokleby received a phone call from Chief-Elect Betsina informing her that the outgoing Chief and administration of YKDFN required him to sever ties with her and remove her from his team; and that he was therefore revoking her status as an essential member of his N'Dilo team. The YKDFN subsequently issued a press release disputing that she had entered Yellowknife legitimately as an adviser.
12. Following up on the media coverage from earlier that day, the Mayor of Yellowknife and the Premier held a joint press conference that was critical of Ms. Nokleby. Ms. Nokleby states that she received negative and critical messages on social media, and that she spent the following week “in an emotional tailspin”.
13. In an interview with Cabin Radio the next day:²

The MLA denied that some remarks she made to NNSL could be construed as encouraging residents to break the evacuation order and return early. In particular, the newspaper quoted her as telling people: “Jump through the Maca hoops. Write the minister of Maca. Write the emergency management organization and ask how do I get deemed essential. That’s what I did.”

Queried on that statement, Nokleby wrote: “My message to people is that I care about them, I’m trying to help, I’m ascertaining for myself what is going on so I can better serve my constituents. People are adults and make their own decisions.”
14. Ms. Nokleby did not leave Yellowknife. She says she did not want to return to Behchoko to impose on her colleague there; the road south was closed; as a single woman she did not feel safe taking the road to Fort Simpson or down to north-eastern British Columbia and then to Alberta.

2. <https://cabinradio.ca/146553/news/politics/rcmp-investigating-katrina-noklebys-return-to-yellow-knife/>.

15. Ms. Nokleby was in Yellowknife when she participated remotely in the Legislative Assembly session held on 28 August 2023 in Inuvik.
16. Ms. Nokleby accepts that by not leaving Yellowknife, she was not in compliance with the evacuation order. In recognition that this has a real impact on first responders, on 22 September 2023 she made a \$3,500 donation to a Yellowknife charity that has supported vulnerable residents during this crisis.
17. As a result of complaints, the RCMP opened an investigation.
18. The evacuation order was lifted as of noon on Wednesday, September 6, 2023.

E. FINDINGS

The Members of the Legislative Assembly have set a high bar for their behaviour, which must be above reproach and must not undermine public confidence in either the institution or them as Members. Section 2 of the *Code* makes it clear that:

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.

In my judgment, Ms. Nokleby's actions in returning to and remaining in Yellowknife despite the Evacuation Orders did not meet this standard.

Ms. Nokleby may have been well-intentioned in genuinely wanting to assist in some way in Yellowknife. However, it strains credibility to assert that a Professional Geological Engineer was essential in dealing with the wildfire situation.

Although I have considerable doubt whether Chief-Elect Betsina from N'Dilo had authority to characterize Ms. Nokleby as an essential worker or actually took the required steps with EMO to make her one, I am prepared to give her the benefit of the doubt on whether her return was lawful. But it was ill-advised, and showed poor judgment when all the other MLAs in Yellowknife and staff at the Legislative Assembly had evacuated, not to mention the thousands of residents who obeyed the order, left and did not try to come back.

It was inappropriate for Ms. Nokleby to make comments in the media giving her contrary view about the state of the wildfire situation, or to encourage others to "jump through hoops" to get on the essential worker list so they also could return to Yellowknife. Her subsequent statement about being there "to ascertain for herself what is going on so she could better

serve her constituents, who are adults and can make their own decisions” is inconsistent with her being there as an essential worker.

I also cannot accept Ms. Nokleby’s assertion in her response that part of her role as an MLA was to keep the Executive accountable about how it was dealing with the wildfires. In my view, this shows a significant lack of judgment about the time and place for accountability, which comes after an emergency, not during it.

Finally, as she herself recognized, Ms. Nokleby was wrong to stay in Yellowknife after August 25, 2023 when the YKDFN made it clear that she was not one of their essential workers.

For all of these reasons, I find that Ms. Nokleby breached section 2 of the *Code*. Her actions do not withstand public scrutiny and bring the integrity of her office into disrepute.

Accordingly, section 102(2)(c) of the Act applies:

102. (2) After conducting an investigation under section 101, the Integrity Commissioner shall do any one of the following:

...

(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);

In reaching this determination, I have considered Ms. Nokleby’s explanation that she did not leave Yellowknife after the YKDFN made it clear on August 25th that she was not an essential worker because she was “in an emotional tailspin”. The whole situation was no doubt stressful—as it was for everyone who evacuated as required. However, Ms. Nokleby was able to participate remotely in the Legislative Assembly session in Inuvik three days later. And, although there was at least one open road to either Fort Simpson or northeastern British Columbia, she characterized her decision not to leave as being because it would have been unsafe for her to do so as a single woman. Instead, she remained in Yellowknife throughout the period to September 6 when people were able to return when the evacuation order ended.

I have considered two further matters with respect to the timing of issuing this report.

First, an election will be held very soon. In at least one jurisdiction (Ontario), the Integrity Commissioner is required to pause any investigation during the writ period. The NWT legislation does not contain such a provision. And the writ will not drop for a number of days. In my view, it would be wrong for the electors to go to the polls without knowing the

disposition of these complaints, particularly given the public criticism of Ms. Nokleby's being in Yellowknife.

Secondly, the RCMP have opened an investigation into the matter. In most other jurisdictions, the Integrity Commissioner would be required to pause any investigation pending the outcome of the investigation. In the present case, however, the issue is whether the Legislative Assembly should take disciplinary action against a Member who has breached the *Code* in a particularly public way. Whether the RCMP decide there are grounds for charging Ms. Nokleby for breaching the evacuation order is a separate matter.

F. RECOMMENDATION ABOUT PENALTY

Accordingly, pursuant to section 102(6)(a), I recommend the Legislative Assembly:

- (a) reprimand Ms. Nokleby, and
- (b) fine Ms. Nokleby \$7,500 to be reduced by the \$3,500 contribution she has made to charity, for a net amount of \$4,000.

Because the Legislative Assembly is very near its end, it may not be able to deal with my Report and recommendation before it is dissolved.

If not, it will be for the next Assembly to deal with this matter. If Ms. Nokleby is re-elected, then my recommendation above would still apply. If, however, Ms. Nokleby is not re-elected, then my recommendation would be under section 102(6)(b)—namely, for the fine only (because a reprimand isn't available for a former Member).

Finally, in other circumstances I might have considered a suspension. However, given that the Assembly is just about to be dissolved, a suspension now would be meaningless. If it is the next Assembly which deals with this matter, it will be after an election when the electors will have spoken having knowledge of this Report. Accordingly, I am not recommending a suspension.

All of which is respectfully submitted this 3rd day of October 2023 by:



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

Copies to: Ms. Katrina Nokleby, MLA
The complainants