

IN THE MATTER OF THE *LEGISLATIVE ASSEMBLY AND EXECUTIVE COUNCIL ACT*,
S.N.W.T. 1999, C. 22

AND IN THE MATTER OF A COMPLAINT MADE BY GLEN ABERNETHY, WENDY
BISARO, BOB BROMELY, JANE GROENEWEGEN, DAVID KRUTKO AND DAVID
RAMSAY; ALL MEMBERS OF THE NORTHWEST TERRITORIES LEGISLATIVE
ASSEMBLY, UNDER SECTION 100 OF THAT ACT CONCERNING THE CONDUCT OF
FLOYD ROLAND, ALSO A MEMBER OF THE NORTHWEST TERRITORIES
LEGISLATIVE ASSEMBLY;

AND IN THE MATTER OF AN INQUIRY DIRECTED BY THE CONFLICT OF INTEREST
COMMISSIONER UNDER SECTION 102(1)(b) OF THAT ACT;

Disposition Report of Sole Adjudicator

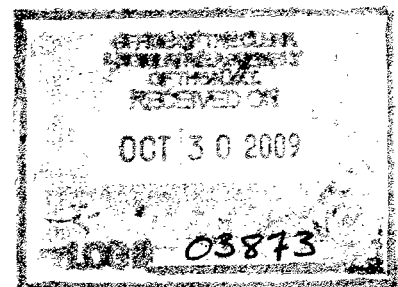
Hon. Ted Hughes, O.C., Q.C.

Appearances

Glen D. Tait and Dana Webster (student-at-law)
Commission Counsel.

Katherine R. Peterson, Q.C.
Counsel for Premier Roland.

Complainants Abernethy, Bisaro, Bromley, Groenewegen and Ramsay
Appearing in person.



IN THE MATTER OF THE *LEGISLATIVE ASSEMBLY AND EXECUTIVE COUNCIL ACT*,
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Disposition Report of Sole Adjudicator

A. Applicable Legislation

Sections of the *Legislative Assembly and Executive Council Act* relevant to an understanding of this Report are the following:

75. Each member shall

- (a) perform his or her duties of office and arrange his or her private affairs in such a manner as to maintain public confidence and trust in the integrity, objectivity and impartiality of the member

100. (1) A member or any other person who believes on reasonable grounds that a member has contravened any provision of this Part may file a written complaint setting out those grounds with the Conflict of Interest Commissioner.

101. The Conflict of Interest Commissioner shall, after giving reasonable notice to the member complained of and the complainant, conduct an investigation into the complaint.

102. (1) After conducting an investigation into the complaint, the Conflict of Interest Commissioner shall submit to the Speaker, the member complained of and the complainant, a report, with reasons, advising that the Conflict of Interest Commissioner

- (a) is dismissing the complaint, where the Conflict of Interest 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,

- (iv) a contravention of this Part was minor or was committed through inadvertence or by reason of an error in judgment made in good faith, or
 - (v) the member took all reasonable measures to prevent a contravention of this Part; or,
- (b) is directing that an inquiry be held before a Sole Adjudicator.

103. (2) Where the Conflict of Interest Commissioner has directed the holding of an inquiry before a Sole Adjudicator, the Commissioner, on the recommendation of the Board of Management, shall appoint s Sole Adjudicator a person approved for such appointment by the Legislative Assembly under subsection (1).

106. (1) After conducting an inquiry, a Sole Adjudicator shall submit a disposition report, with reasons, to the Speaker, the 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,
 - (ii) that a contravention of this Part was minor or was committed through inadvertence or by reason of an error in judgment made in good faith, or
 - (iii) that the member took all reasonable measures to prevent a contravention of this Part; or
- (b) the Sole Adjudicator has found the member to be guilty of contravening a provision of this Part, and is recommending to the Legislative Assembly that one or more of the following punishments be imposed on the member:
 - 1. a reprimand,
 - 1. a fine in an amount not exceeding \$10,000 established by the Sole Adjudicator,
 - 1. 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 an agency or corporation 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,
 - 1. 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,
 - 1. a suspension for a period not exceeding 30 sitting days of the privileges of the member to sit in the Legislative Assembly,
 - 1. a declaration that the seat of the member is vacant,
 - 1. an order that the member pay costs in an amount determined by the Sole Adjudicator.

B. Commissioner's Investigation

Conflict of Interest Commissioner Gerald L. Gerrand Q.C. conducted an investigation into the complaint made by the above identified six members of the Legislative Assembly regarding certain conduct of Floyd Roland, Member of the Legislative Assembly for Inuvik Boot Lake and Premier of the Northwest Territories (Premier Roland). Commissioner Gerrand

submitted his Report as required under section 102 (1) on or about the 29th of May 2009. Pursuant to section 102(1)(b) the Commissioner directed that an inquiry be held before a Sole Adjudicator. As provided for in section 103(2) I was, on the 3rd of June 2009, appointed Sole Adjudicator. I have conducted the inquiry requested of me and this is the Disposition Report, with reasons, submitted pursuant to section 106(1).

The initial complaint was in the form of a letter dated February 16, 2009, signed by the six M.L.A.'s and was delivered by them to the Commissioner. The letter reads:

We the undersigned members of the Legislative Assembly are writing to you in the matter of the conduct of Premier Floyd Roland with respect to his duties as Premier.

We learned in mid-December that Mr. Roland was involved in an intimate relationship with a key staff person in the Legislative Assembly. This staff person had access to all in-camera committee meetings, was the Clerk of the Standing Committee on Economic Development and Infrastructure on Government Operations. As a Table Officer she also had a hand in drafting responses to points of Order and Privilege raised on the floor of the Assembly, some of these rulings involving matters raised by or against Premier Roland.

We question if Mr. Roland had a duty to disclose the nature of this relationship. We also have reason to believe that information discussed in confidence in committee was shared with the Premier. An early disclosure would have enabled an opportunity for action to avoid conflict of interest.

We seek your ruling as to whether the *Legislative Assembly and Executive Council Act* has been breeched (sic) under Section 75, Obligations of Members, 'Each member shall (a) perform his or her duties of office and arrange his or her private affairs in such a manner as to maintain public confidence and trust in the integrity, objectivity and impartiality of the member'. There is also reference to similar commitments in the Code of Conduct for Members which each Member signs when they are sworn into office.

We were surprised to learn of this relationship that had been in progress many months before we heard about it. The Premier had denied any wrongdoing in this matter, stating that this relationship is only relevant to his personal life, not his public duty or life.

We trust that you will consider this complaint and decide if it should be referred for a formal investigation and report. We have no tools at our disposal to investigate the full facts of what transpired and how it affects the integrity of our work as committees and members.

Commissioner Gerrand requested further detail respecting the complaint and the six M.L.A.'s responded by letter dated February 25, 2009, which reads:

We, the undersigned, are in receipt of your request for further information.

The name of the staff person, who was the Clerk of two Committees and often attended the Standing Committee on Planning and Priorities, is Patricia Russell.

In Regular Member's Caucus (Priorities and Planning) we are very candid in our discussions on the actions of government. The Chair, Ms. Groenewegen was vocal early on in the 16th Assembly. When the Premier was challenged on directions or lack of communication with regular members, he insisted that the source of the dissatisfaction was being stirred up by two members, including Ms. Groenewegen. In a specific instance in Caucus Mr. Roland stated that he could not work with the Chair, alleging that she was "filtering communication and screening correspondence" to the committee. This seemed a strange allegation at the time because it is about process that staff would most be attuned to, as opposed to members, Ms. Russell being a key player in the staff compliment.

There were numerous occasions when Mr. Roland took particular aim at Ms. Groenewegen and Mr. Ramsay. In retrospect, we don't think this was a coincidence because, during meetings of our Standing Committee Priorities and Planning, both of these members were critical of government and the Premier's leadership.

Although these instances are not intended to be exhaustive, we will list a few exchanges.

In one meeting the Premier told Mr. Ramsay that he "has" information on all of us and he will use it." This threatening demeanour was not uncommon in reference to the things he alleged he knew.

On another occasion the Premier told Mr. Abernethy that he "knows everything that's said in that room", referring to Committee Room A where regular members meet. He also quoted back to Mr. Abernethy word for word an exchanged in the Committee meeting when the performance of Minister Lee was being discussed and Ms. Groenewegen asked Mr. Ramsay, "do you want her position on Cabinet?"

This repeating of what took place in Committee occurred with other regular members who are not quoted in this letter as they did not decide to participate in filing this complaint. These other incidents that were related to us are available to an investigator through other processes of evidence gathering.

We would like to reiterate that we are interested in a ruling that would determine if a conflict of interest existed by the failure of the Premier to disclose the nature of his relationship with one of our Clerks. We know that the Clerk's Office would not knowingly allow a family member of the Premier or Cabinet Ministers to be hired to work for our committee at the Legislative Assembly.

We hope that this letter addresses your questions.

In his Report Commissioner Gerrand gave consideration to the interpretation that ought to be applied to section 75(a). He arrived at the following conclusions, with which I am in agreement:

...I have concluded the mischief which section 75(a) seeks to avoid...includes conduct of an ethical nature if that conduct impairs public confidence and trust in the integrity, objectivity or impartiality of the member.

...
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 of 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.

After consultation, initiated by Commission Counsel, the Terms of Reference for my inquiry were fixed as follows:

C. Terms of Reference and Subsequent Admission

TERMS OF REFERENCE

The Sole Adjudicator Ted Hughes, O.C., Q.C., as named by the Commissioner, on the recommendation of the Northwest Territories Legislative Assembly Board of Management shall inquire into whether:

Floyd Roland, member of the Legislative Assembly for Inuvik Boot Lake performed his duties of office and arranged his private affairs in such a manner that he failed to maintain public confidence in his integrity, objectivity and impartiality as a result of entering into an intimate relationship with the Principal Clerk, Committees, of the Northwest Territories Legislative Assembly in the summer and/or fall months of 2008 without the timely disclosure of that relationship, contrary to the provisions of section 75(1)(a) of the *Legislative Assembly And Executive Council Act*.

The Sole Adjudicator shall after conducting the Inquiry, submit a disposition report, with reasons, as required by the provisions of section 106(1) of the *Legislative Assembly And Executive Council Act*.

On August 4, 2009, Counsel for Premier Roland wrote to Commissioner Counsel as follows:

Re: Roland, Floyd
Our File No. 09-68-KP

Mr. Roland admits and agrees with the following finding of the Conflict of Interest Commissioner Gerrand as recorded in his report of May 29, 2009.

“Regardless of the commencement date of the intimate relationship between Premier Roland and Ms. Russell, it is clear that it extended in secrecy for a period of some months.”

Mr. Roland agrees that this letter shall be provided to the Sole Adjudicator at the commencement of proceedings on September 8, 2009 as an admission by Mr. Roland.

Prior to the calling of the first witness, the letter was provided to me at the hearing and, with the admission it contains, was marked as Exhibit 5.

Commission Counsel then advised that the first witness would be the Clerk of the Legislative Assembly of the Northwest Territories, Tim Mercer. Counsel then proceeded to explain his purpose of placing Mr. Mercer under subpoena and requiring his attendance. He outlined the need for me to hear what he described as “objective and dispassionate evidence with respect to the operation of the NWT Legislature and Committees”. It was made clear that no questions would be asked concerning the complaint that is before me for adjudication.

Commission Counsel went to great lengths to outline the impartiality and neutrality with which the Clerk must carry out his duties to the Assembly and its nineteen members. He emphasized the Clerk’s role to provide objective advice to all Honourable Members in complete confidence. Counsel expressed Mr. Mercer’s concern about a perception that could arise from his appearance on the witness stand as “taking sides in this matter”. He of course was being called for no such purpose and Counsel was at pains to emphasize that no questions relating to the factual underpinnings of the complaint would be asked. I then made the following inquiry:

What I’m going to ask Ms. Peterson (counsel for Premier Roland) and the complainants is if they are in accord with proceeding in the manner in which Mr. Tait (Commission Counsel) has outlined this and respecting the position of the Clerk who as has been said holds a position as Clerk for the whole House who performs his duties

with neutrality and impartiality in every respect. I have worked with Mr. Mercer over a period of years and know him to perform his duties with that degree of excellence and impartiality. I fully intend to respect what Mr. Tait has said about his appearance here today subject to anything counsel or complainants might want to put before me that might qualify what Mr. Tait has said.

Ms. Peterson immediately advised that she had no difficulty “in proceeding in the manner indicated”. She was followed by Mr. Bromley, speaking for himself as his colleague complainants who likewise were in accord with the basis on which Mr. Mercer would be presenting his evidence. After further confirming remarks from me, Mr. Mercer took the stand.

D. The Evidence of Tim Mercer

The witness was invaluable in setting the scene in order to allow for an appreciation of the functions of the Legislature, its Committees and the office of the Clerk and the interfacing of the staff of that office with the nineteen Members of the House. There was total respect from everyone as to the limits within which Mr. Mercer was to testify. I will now outline the points he made which I consider relevant to my assignment and which I accept as being factually correct. That will be done in two ways. Indented, single spaced inclusions are direct quotes from Mr. Mercer. The other paragraphs are my summations of additional points he made.

The Clerk is the senior non-elected official of the legislative branch of government. The Clerk is the servant of the legislative branch as an institution of government, and the Clerk is an impartial, neutral, and objective advisor to the Speaker of the Legislative Assembly, to all 19 members of the House, and to its standing committees. And the Clerk is the procedural expert in terms of the operation of the Legislative Assembly and is responsible through the Speaker for the provision of advice with respect to the effective operations of the Legislative Assembly.

The Clerk is the Secretary to the Assembly’s Board of Management which has overall responsibility for the management and administration of the Legislative Assembly including financial responsibilities and the establishment of policies for the House. It is chaired by the Speaker, and includes one member of the Executive Council (Cabinet Minister), and three regular (non-Executive Council) members of the House.

In the consensus form of Government existing in the Northwest Territories the nineteen elected members meet following each general election and choose from among their ranks, a Speaker, a Premier and six Ministers. The appointments are subsequently confirmed in the Assembly. The Premier and the six Ministers form the Executive branch of Government, and function as the Executive Council. The remaining eleven members are known as “regular members” and constitute part of the Legislative branch of Government. They receive appointments to Standing Committees of the House and perform many of the same traditional responsibilities of a formal opposition. One notable exception is that under the system of government in the Northwest Territories, the regular members are not a “government-in-waiting”. In a sense, as Mr. Mercer said, the government is structured as a perpetual minority government system.

THE ADJUDICATOR: Before you go into that, based upon your last answer, can the 11 thwart a government proposal, i.e., a piece of legislation, if they happen to all individually oppose the idea that is put before legislature?

A: Absolutely. One of the unique features of our system of government is it is structured in a sense as a perpetual minority government system. There are seven members of the Executive Council, so eleven members who were not on Executive Council. While none of them are bound by any type of party discipline, if a majority – if a critical mass of them decide that they wish to defeat the government, either in a standing committee process or the floor of the House, they can and from time to time do that. So in essence, the 11 regular members hold the balance of power of the Legislative Assembly.

THE ADJUDICATOR: But on a vote, whether it's a money bill or whatever, the government does not fall because of the consensual nature of the legislature. Is that correct?

A: We've never had what has been referred to, typically, in a party-based system as confidence convention.

THE ADJUDICATOR: Yes.

A: And although many widely believe that we're subject to the same convention of confidence that exist in many party-based systems, we've never formally tested it in our system. One view is that premier and each of the individual members of the Executive Council hold individual confidence of the House. That confidence can only be withdrawn by an expressed statement to the fact. In other words, the House would have to move a motion to formally withdraw the confidence of a particular minister.

THE ADJUDICATOR: In that role.

A: Yes. Now, we've had instances where we've had to discuss the existence of the confidence convention in our House. We've come fairly close to there being cases where some of the similar things that would normally be considered an expression of loss of confidence happened. For example, if the minister of finance was to introduce a budget bill, and the budget bill was defeated, there is a general understanding that that would be an expression of loss of confidence. It's never been tested in our system. I think until such time that it has been tested and the House develops conventions around that; there is uncertainty as to how the confidence convention would be exercised in our system of government.

THE ADJUDICATOR: I think the fact that it has never been tested speaks to the respect and the operations of the House as it has been carried on from time to time.

A: I think that would be an accurate conclusion.

Standing Committees of the House have only the powers and authorities expressly delegated by House as a whole. They are established by the House and it makes the committee appointments. They consider matters referred by the House for study and report back. A significant role of the Standing Committees is to act as sounding boards and feedback mechanisms for the government when they intend to propose a piece of legislation or policy initiative.

Standing committees operate as parts of the Legislative Assembly as a whole. Standing committees operate under the protection of parliamentary privilege. Because of the nature of their duties, they, out of necessity and out of choice, elect to hold many of their meetings in camera – not open to the public. The reason for that, largely, is because the government has given them an opportunity to provide early input into things that impact the public at large, be that a budget or be that a piece of legislation. Because members are given this early opportunity to review these government proposals when they are very much in the early stages of drafting, they do so in camera to avoid the government having to show all its cards. So many of their meetings are held in camera because much of the information is secret and sensitive.

I think it's important to show that there are two levels of in camera. Committees for the most part carry out their meetings in camera, which means the public are not entitled to attend. There are meetings that are held fully in public. When we speak of an in camera meeting, it means the committee is meeting in the absence of members of the public. Other regular members are entitled to attend committee meetings at that level of meetings, so to speak. The committee can, then, also decide to exclude anybody but its

own membership and staff from those meetings. That's the second tier of in camera meeting.

So when the standing committee is meeting in camera, it does so with full expectation, unless there is a decision to the contrary, that their discussions, decisions, and actions are not to leave the room.

And one of the advantages of being a regular member of our system of government is that you can actually affect real change with respect to legislation and budget because you get that early opportunity to provide feedback. So while the government is not bound necessarily to follow the advice and feedback from the standing committees, for the most part, that advice is taken seriously and is incorporated where possible.

Standing committees are typically made up of regular members of the Legislative Assembly; in other words, members who are not the Speaker or the Executive Council. So each of the committees would typically be chaired by a regular member and would consist of five or six regular members in total. One exception to the regular members being the exclusive members of these committees is one of our standing committees known as the Standing Committee on Rules and Procedures, which has a member of the Executive Council as part of its membership largely because the decision of that committee affects all members and affects the day-to-day operations of legislative business.

Present Standing Committees are:

- Priorities and Planning
- Government Operations
- Economic Development and Infrastructure
- Social Programs
- Rules and Procedures

Standing committees receive support from employees of the office of the Legislative Assembly; in other words, the office of the Clerk. Typically, a standing committee would be assigned a Clerk and a committee researcher. And in addition to that, from time to time, one of the Legislative Assembly Law Clerks may be called upon to provide targeted advice to the standing committees on legal matters. Standing committees are supported by two staff, Clerk and a researcher staff.

The Clerk is there largely to provide logistical support to the standing committee, to work closely with the committee chairs to

ensure that the committee is functioning according to the direction of the chairperson and members of the committee, to provide procedural advice to the standing committee in terms of how it fulfils its mandates, and as well to manage the budget of the standing committee, to be overall responsible for its administration, and to coordinate the activities of all other staff people. The Clerk is neither higher nor lower in terms of standing in front of standing committees, but we often say the Clerk is the first among equals in terms of the servants of the committee.

The Clerks office consists of Mr. Mercer, a Deputy Clerk and two Principal Clerks. Mr. Mercer provides secretarial services to the Board of Management and the Full Caucus Committee. The other three clerks, each serve as Clerk to at least one Standing Committee and some have two Standing Committees. The Deputy Clerk is Doug Schauerte.

The two Principal Clerks, however, have different secondary and primary duties that distinguish one from the other. Principal Clerk of operations, in addition to being committee Clerk, acts as assistant Clerk to the Board of Management and works closely with the Clerk with respect to the corporate management of the Legislative Assembly, particularly with respect to management, appointment, administrative duties of the statutory officers. The secondary duty of this individual is focus on the broad corporate management issues that largely occupy the time of the Clerk.

The Principal Clerk committees is focussed more on the committee, the formal committee work of the House. In other words, in addition to being a committee Clerk, it's this person's role, at a staff level, to coordinate the activities of the committees, ensure that they are getting consistent and non-conflicting administrative support, ensure that schedules are drafted, budgets are drafted and adhered to, and largely to work with all of the support staff, all of the chairs of the standing committees to help coordinate the broad activities of the standing committees...That individual, as well, has responsibilities for the public affairs and communications activities of the Legislative Assembly, so the public affairs and communications advisor reports to this person, and it is this person's overall responsibility for ensuring that the public affairs and activities of the Legislative Assembly, its committees, and its individual members are carried out according to budgets and the broad directions according to the Clerk and the Speaker...I think that person is certainly more preoccupied with activities of all standing committees as opposed to exclusively to those committees to which they are the formal assigned Clerk.

The Clerks are there to provide advice to the chairs of the standing committees and the standing committee members in terms of how they carry out any aspect of their terms of reference or mandate, to ensure that is carried out in keeping with the rules of the Legislative Assembly and with the long standing traditions and privileges of any parliament.

The Standing Committee on Priorities and Planning is a standing committee consisting of all 11 regular MLAs. Unlike the other standing committees, it does not have specific responsibilities for individual departments. Rather it has a broad view to consider and provide advice back to the government on strategic issues. It kind of swaths across all departments including early planning on the government's proposed budgets, fiscal overviews, and issues that are simply too broad cutting across too many standing committees for one committee to deal with.

For the most part, this standing committee is active when the House is in session, and its role is to coordinate the activities while the House is sitting, to coordinate the activities of regular members in the House on any given day, to discuss and plan strategy for House business, and find common ground amongst various committee members or regular members of the House, proceed with issues that may be facing the House on any given day... when the legislature is in session, that committee meets daily in the mornings prior to the commencement of the sitting of the House.

Standing Committee on Rules and Procedures is focussed on the rules and internal operations of the Legislative Assembly and its committees. This committee can consider, debate and make recommendations on matters with respect to the rules of the formal rulings of the Legislative Assembly that are referred to either by the House or the Speaker. So they concern themselves with the internal operations of the House proper. They also have a mandate to hear reports from the Conflict of Interest Commissioner.

The Full Caucus is an informal meeting of all 19 members of the Legislative Assembly to coordinate largely House planning. During the course of the assembly House planning and other routine matters, all 19 members have to have equal say without wearing hats as cabinet speakers or premier or committee chairs...Caucus does not have any formal decision-making role...Typically it will convene once a week when the House is sitting.

I should say that the rules of the Legislative Assembly allow any member to attend any meeting of any standing committee for the most part. That means that any regular member who is not a

member of that standing committee is entitled to sit in on those committee meetings so long as the committee hasn't made a determination of the in camera or exclude anyone other than the committee members there. In terms of formal membership, either members or alternatives with that one exception, members of the Executive Council are not part of those committees.

Frequently Standing Committees will invite a Minister to appear and discuss certain issues. Also there are occasions when committees decide to share information with members of cabinet but there is no entitlement for members of the Executive Council to know what takes place in Standing Committee meetings.

Communication between committees and Executive Council and also regular members and Executive Council Members are an essential, important and integral part of the operation of the business of governing.

All Clerks of the House are Table Officers of the Legislature. As such, they are entitled to sit on the Floor of the House at the Clerks table when the House is operating as a fully functioning Legislature. They can give advice to the Speaker and all Members of the House when it is in session.

A Clerk may attend a meeting of a standing committee even though that Clerk does not have responsibility for that standing committee. The only exception to that is an in camera meeting that expressly excludes all staff. When the House is in session the Priorities and Planning Committee meets daily and all Clerks usually attend just to make sure they have first hand knowledge of when various matters will be called for debate in the House. This is particularly so with respect to early parts of the meeting when there is discussion about what is going to happen in the House that day.

It does happen that the Clerk's staff are in the room during Priorities and Planning Committee meetings when ministerial performance and government accountability are drawn into question. When discussion occurs about ministerial performance the Clerk and his staff are mere bystanders.

The Clerk, all officers of the Assembly and its staff members take an oath of office prior to assuming their positions.

Ms. Patricia Russell, the person identified in the letter of August 4, 2009 from Premier Roland's counsel, served as The Principal Clerk Committees (the formal title is Clerk, Standing and Special Committees) and as Clerk for the Standing Committee on Economic Development and Infrastructure and the Standing Committee on Government Operations.

That concludes my review of what I believe to be the significant points of the evidence given by Mr. Mercer. I accept as credible and factual all that I have reviewed, both quotes attributed to Mr. Mercer as taken from the transcript of his evidence and the paragraphs I have written summarizing other significant points made by him.

Appreciating the concern with which Mr. Mercer approached the responsibility that rested with him on this occasion I record below remarks I addressed to him prior to leaving the witness stand.

Well, Mr. Mercer, let me thank you very much for your contribution here. I think your evidence would be well referred to political science professors for, if not Political Science 101, perhaps even an advance course, because I think you really laid out a lot of interesting concepts, particularly informing the outside world as to how consensus government works, and I appreciate that contribution. And you came in here, sir, as a man of recognized integrity and a leader in your field through your knowledge, and you certainly leave this room with that very sound reputation well intact as an impartial, fair person fulfilling a very responsible position in our society, and particularly with respect to the Legislative Assembly of the Northwest Territories. So I thank you for your attendance.

D. The Evidence of Patricia Russell

Ms. Russell confirmed much of the evidence of Mr. Mercer with respect to the organization, process and procedural practices of both the Legislative Assembly and the Office of the Clerk.

Ms. Russell commenced employment with the Government of the Northwest Territories in August 2006 in the role of Public Affairs and Communications Advisor, a position to which she was well suited given her extensive background in that area. A year later she accepted an invitation from Mr. Mercer to assume the position of Principal Clerk of Committees. After outlining her involvement with the Standing Committees of Economic Development and Government Operations she gave the following answer in response to a question about her responsibilities as Principal Clerk of Committees:

As a Clerk, the area of responsibility is to provide logistical support to those committees. So that's logistical support by way of organizing and scheduling and compiling information; not writing the information, since writing the information, that came from the research department. So the Clerk compiles, and writes agendas, consults with the committee chairs on the agendas. Administrative. Administrative support.

Ms. Russell said that in assuming her new role she was not asked to take a new oath of office in that, on the 28th of August 2006, she had completed the following oath:

I, Patricia Russell, do swear that I will faithfully discharge my duties as an employee of the Office of the Legislative Assembly and will observe and comply with the laws of Canada and the Northwest Territories, and, except as I may be legally required, I will not disclose nor give to any person any information of document that comes to my knowledge or possession by reason of my being an employee of the office of the Legislative Assembly. So help me God.

Ms. Russell confirmed that there was an expectation that all four Clerks would attend meetings of committees of the Legislative Assembly. She added:

All of the Clerks – we were instructed to attend as many committee meetings as possible because they're so interrelated. And a P and P meeting, for example. When priorities and planning met, and that was mainly during session, when P and P met, all of the Clerks were expected to attend for at least a period of time.

Ms. Russell confirmed that there were circumstances when the Priorities and Planning Committee would go deep-in-camera and ask staff members to leave. Staff would remain when committees were meeting in camera. She made it quite clear that she understood what was said by committee members on these occasions were confidential. She said that “to this day I have

upheld” the oath that she took. She said that to this day she had upheld the oath that she took. She said "confidentiality has been my bread and butter”.

From September to late November 2008 Ms. Russell had one hundred percent attendance at the Economic Development and Infrastructure as the Government Operations Committees for which she had specific clerk responsibilities. During that same time frame the Priorities and Planning Committee met on 28 days. On 18 of those occasions Ms. Russell was in attendance, at least part time, as an observer. She said she was present when discussions occurred in Committee about the performance of Premier Roland and other members of the Executive Council and that she may have been present when discussions turned to the potential of actually removing from office the Premier or other members of the Executive Council. She said that because during this time she was in an intimate relationship with Premier Roland she considered such conversations might be a conflict so she left the room.

Some pages of Hansard for October 2008 were identified by Ms. Russell. They recorded, including discussion when it occurred, the following:

- 1 (a) Point of Order raised on October 7 by complainant Groenewegen with respect to an answer given in the House on October 6 by Premier Roland.
 - (b) The Speaker’s ruling on October 9 finding that the member did not have a point of order.
- 2 (a) Point of Order raised on October 9 by Premier Roland that on October 8 Ms. Groenewegen had imputed false or hidden motives to him.
 - (b) The Speakers ruling on October 11 finding that Premier Roland did not have a point of order.
- 3 (a) Point of Order raised on October 17 during Committee of the Whole by Premier Roland with respect to comments made by complainant Bromley in Committee of the Whole in the context of debate on capital expenditures.
 - (b) The ruling by the Chair of the Committee of the Whole on October 21 found that Premier Roland did not have a point of order.

Ms. Russell was asked whether in her role of Principal Clerk of Committees/Table Officer she had been involved in any of the Points of Order or the rulings made in reply to them.

She advised that she had written the script for Ms. Groenewegen in presenting her Point of Order. Ms. Russell had no involvement in the other two Points of Order.

With respect to the preparation of the rulings on the Points of Order Ms. Russell outlined the collaborative effort that went into the process. Following the receiving of a Point of Order those Clerks who were in the House at the time would meet with the Clerk and advise him of what had occurred. The Clerk would then have a preliminary discussion with the Speaker (or with the Chair of Committee of the Whole as the case may be) and receive some indication of the way the Speaker would like to proceed. The Clerk would then meet with the Deputy Clerk and the two Principal Clerks and report on his meeting with the Speaker. Then, as a collaborative effort, the research begins with input from all four Table Officers. The Clerks reference Hansard, Rules of the House, Beauchesne and previous discussions. When a ruling has been crafted through this collaborative effort the Clerk returns to the Speaker and the Speaker makes the final decision when he is ready to do so.

Ms. Russell said that she “very likely was” part of the collaborative effort that led to the October 9 ruling of the Speaker. She acknowledged that she “had a role to play” in the writing of the ruling of October 17 she said she would have had some involvement in the drafting of the ruling of October 21.

Ms. Russell acknowledged her concurrence with the consent admission made by Premier Roland that they had been in an intimate relationship that existed in secrecy for some months. In giving her evidence Ms. Russell made it clear that she understood an intimate relationship to be the kind of relationship existing between husband and wife. She said her relationship with Premier Roland became a personal one towards the end of July in the sense that they were spending some time together, and it continued on that basis until September by which time it had become an intimate one. She said that notwithstanding that relationship she absolutely had not divulged any information to Premier Roland about what was going on in the Standing Committees of the Legislature. She acknowledged that she was in that intimate relationship when she wrote the Point of Order for Ms. Groenewegen and participated in the preparation of the rulings issued by the Speaker.

Ms. Russell received a call from Premier Roland on the morning of November 18 advising her that he was advising some of his staff that day of their relationship. Ms. Russell said that then became the appropriate time to explain the situation to her daughter and that she also wanted to tell her sisters and other close family members. She planned to take these steps that evening. It was her intention to inform the Clerk the following morning.

Before Ms. Russell could carry out her intentions the next day she was requested to attend in the office of the Clerk. She said, with respect to their conversation about the relationship, “he beat me to it”. She said they talked about how her job might change. She willingly accepted that her relationship with Premier Roland might cause some changes or adjustments to the work she did in the Assembly. She said she knew changes were going to take place and she was prepared for that. She said the discussion in the Clerks office, with the Deputy Clerk also present, ranged from making no change to working in another department in the Government. She told them she was not prepared to work in another department and the discussion turned to the possibility of a realignment of her committee responsibilities. At that point Mr. Mercer suggested a transfer to the Elections Office. She said the next day she accepted that assignment and with respect to it she said:

I took that assignment on my own accord. I took that assignment willingly, with the understanding that it would end in January of 2010. And the Clerk and I are now negotiating the possibility of extending that assignment.

But the matter of my moving – leaving the table or the Clerk’s position was something that I agreed to, something that I thought was necessary just as much as the Clerk thought was necessary.

Ms. Russell said she is still the Principal Clerk of Committees. She said “That remains my job. I am temporarily assigned to work in the elections office.” The position she presently holds there is that of Deputy Chief Electoral Officer. I had the following exchange with Ms. Russell:

THE SOLE ADJUDICATOR: Well, assuming your relationship with Mr. Roland continues, is it your view that you should ultimately be back performing duties as a Clerk of the House?

A: While Mr. Roland is a member?

THE SOLE ADJUDICATOR: Yes.

A: I accept that it would be better for me to stay at elections. I fully accept that. In fact, that – Mr. Mercer and I have been

discussing that, and we've talked about extending it to the end of this assembly, and I'm fine with that. I'm good with that.

E. The Evidence of Five of the Six Complainants

(a) Glen Abernethy M.L.A.

After the Premier attended a meeting of Full Caucus on December 5 Mr. Abernethy went to the Premier's office to discuss his concerns about the Premier of the Northwest Territories being in an intimate relationship with the Clerk of the House. He said he stressed the point that at no time would anyone in their right mind ever have their wife or direct family member of a Premier or Cabinet member sit in on committees because it would be seen as a clear and obvious conflict of interest.

Mr. Abernethy said that there is a lot of information that comes out in committee that can go back and forth freely with ministers but there is information that is confidential, specifically when the talk is about ministerial performance. He saw the Priorities and Planning Committee room as a safe venue to vent frustrations and concerns in confidence. He said that at his meeting with the Premier, the Premier quoted back to him a confidential conversation that took place at a Priorities and Planning Committee meeting about ministerial performance. He said Ms. Russell had been in attendance at that meeting but the Premier told him she was not the source of his information. The Premier said his information came from a committee member and Mr. Abernethy went on to say that the Premier told him that he knew everything that is said in the room – it all comes out.

Mr. Abernethy said he found it incredibly hard to believe that two individuals in an intimate relationship don't share information. He said that even if information had not been shared there is a perception that information could be passed and the perception becomes reality. He said:

In this case my major concern is built on that, which is the premier did sign an oath, and we put a lot of trust in him as a result of that oath, and he swore to that trust.

By entering into a relationship with the Clerk, the premier and the Clerk, it's a betrayal of that trust, which actually makes it harder to trust the premier on any capacity moving forward given that

betrayal that has already occurred. And the trust has to exist in this type of Legislature, in a consensus government.

The premier and the Clerk entering into a relationship which is clearly and obviously a conflict of interest, regardless of whether information changed hands, there's definitely a perception that it must. And I don't believe that two people in a relationship aren't going to have some pillow talk.

Mr. Abernethy said he held that view notwithstanding the fact that the Clerk had taken an Oath of Office. He said he had no knowledge that information had changed between them or that there was a sharing of information but he believed it to be so because it was unbelievable to him that information would not be shared between intimate people.

(b) Wendy Bisaro M.L.A.

Ms. Bisaro said that the purpose of her involvement in this process was to determine whether or not there is a breach or violation of Section 75(a) by Premier Roland, a section which talks to maintaining public trust and confidence. She said she felt the Premier and the Clerk of Committees were in a conflict position and she felt the Premier's actions were inappropriate.

Ms. Bisaro was asked why she proceeded with taking the matter to the Conflict of Commissioner a week after Premier Roland made a statement in the House (Exhibit 13). She said she did not feel the apology was directed at members. She said that it was her view that the statement did not address the Premier's actions and whether they were appropriate or inappropriate. She said she was looking for a statement from the Premier that would acknowledge his wrong doing and she did not get that.

Ms. Bisaro said she believes that the intimate relationship led to a perception of possible breach of confidentiality. As a result she felt the impartiality of the Clerk had been compromised and for Ms. Bisaro that was a "definite no-no." She expanded on that view:

Anybody who's employed by the Legislative Assembly as well as members has a duty, has an obligation, to remain impartial, to live slightly above the level of everybody else, so to speak. The institution demands that we be honest, moral, ethical, that we maintain the public trust and confidence. And you know, the people who work at the Legislative Assembly are required to be impartial, to be apolitical. If they are not, or even if there is a

perception that they are not, then public trust and confidence is compromised in my view.

Ms. Bisaro said she was not aware of the sharing of any information, confidential or otherwise, between Ms. Russell and Mr. Roland.

Ms. Bisaro was asked whether, if she had been aware of the existence of the relationship prior to the date when she was officially notified, the performance of her duties in standing committees or on the floor of the Legislature would have been affected. She responded in the affirmative and stated her reasons as follows:

Yes, in committees particularly. I would have been a lot more guarded or circumspect in my remarks in committee. We were in a time where we were feeling that we as regular members, that we lacked confidence in the executive, the cabinet and the premier. And we had some extremely frank discussions about the performance of the individual ministers and/or the premier. And I certainly would have been probably less frank in my remarks, and I suspect probably would have requested more committee meetings without any staff at all, deep in camera, I think it's been referenced.

She said she supported the decision of the Speaker and the Clerk of the Legislative Assembly to remove Ms. Russell from her duties as Committee Clerk and as a Table Officer immediately upon confirmation of the existence of the intimate relationship. She is of the view that the Speaker and the Clerk had an obligation to act as they did.

(c) Bob Bromley M.L.A.

Mr. Bromley said that the letter of complaint to the Conflict of Interest Commissioner resulted from a concern about the possibility of shared confidences and the lack of trust; really the breach of trust and that damage was done to the democratic process. He said he saw the breach of trust being the Premier putting the Clerk in a position where she as well as the Premier, had conflicting allegiances. He said:

They had sworn an oath to an institution, and yet they had all the loyalties that go with an intimate relationship. And that to me was the breach of trust.

He returned to that concern when stating why he was not willing to have Ms. Russell continue to serve as Committee Clerk:

With her being in this situation of conflict where she had two loyalties, one to her intimate partner and one to the institution, I would never totally have confidence in what side of the fence she might fall on, being human.

Mr. Bromley explained that his participation was driven by a desire to achieve clarity on whether there was a breach of trust of public confidence by causing this situation to develop. He said what was relevant to him was that the Premier had not arranged his personal and private affairs in a way that maintained public confidence in his objectivity, impartiality and integrity. He said the sort of relationship that happened here between the Premier and Ms. Russell totally undermines the public confidence in the ability of both the Premier and the Clerk to do things in a way that maintains that confidence.

Mr. Bromley said that if he had been aware of the relationship prior to the date that it became public, he probably would not have been as candid and open about some of his statements and that in the House he would have been concerned about Ms. Russell's role as a Table Officer in assisting the Speaker in resolving disputes.

Mr. Bromley said that with respect to the Premier's remarks in the House on February 9, he saw no statement of awareness showing an acknowledgment of wrongdoing or the gravity of the situation to the democratic process.

(d) Jane Groenewegen M.L.A.

Ms. Groenewegen confirmed that she is the current chair of Priorities and Planning. She said that she did not characterize it as the opposition caucus. She said the idea in a consensus government is that everybody works together.

Ms. Groenewegen said that at Priorities and Planning meetings there was discussion about the performance of particular ministers. She said almost from the beginning of the 16th Assembly concerns had been expressed, escalating up until February 6 when a motion of non confidence came to a vote in the House. She said one day there was discussion about one minister in particular with whom there was unhappiness about performance and the talk did turn

to what the options were of settling on someone who could do the job better. She said there were concerns expressed about Premier Roland's performance, particularly relating to communications, at the time of down-sizing the public service.

Ms. Groenewegen said that when Premier Roland attended a full caucus meeting on December 5 he said he didn't think he could work with her as chair of Priorities and Planning because she had been involved in screening communications and filtering correspondence. She said these accusations were untrue. She said that day he also said something to the effect "I know things about all of you and I'll use them if I have to."

Ms. Groenewegen said there is lots of give and take between regular members and cabinet members. She agreed that it was possible that regular members tell ministers what goes on at Standing Committee meetings. She acknowledged that at times information discussed or disclosed in the confidential framework of committee meetings does come to the attention of cabinet members by one fashion or another but she never had a concern that such information was communicated by staff members.

Ms. Groenewegen confirmed that Ms. Russell was a frequent attendee at Priorities and Planning Committee meetings. She said that the expectation was that whatever was said there stayed in the room. She said she had no information that Ms. Russell had conveyed any information to Premier Roland.

Ms. Groenewegen noted that Ms. Russell had been removed from her job by those in positions of authority when the relationship came to light and then added:

So I think the very fact that that occurred, you know, speaks to whether or not there was an acceptable arrangement.

Ms. Groenewegen was asked what it was that Mr. Roland did to cause her to feel compelled to sign the letter to the conflict commissioner. She replied:

It's not what he did. We work with people who, every day who are in all different types of circumstances, relationships. It wasn't what he did as what he didn't do, and that was that he did not disclose that the relationship existed, and had that happened at an appropriate time, I believe the matter would have been dealt with and we would not be here today.

She acknowledged that she did not know when that disclosure should have been made.

(e) David Ramsay M.L.A.

Mr. Ramsay said that in the fall of 2008 he had concerns that information was getting out of the Priority and Planning Committee and into the hands of members of the Executive Council and he believed the finger was squarely pointed at one member.

He said that in the period August to December 2008 there was a great deal of concern about the government's performance and in particular with ministerial performance including that of the Premier. He said these concerns were discussed at Priority and Planning and members of the Clerks staff were in attendance as well as research staff. He said it was common for Ms. Russell to attend these meetings. He was asked if he was concerned that Ms. Russell had something to do with confidential information getting out of the Priorities and Planning Committee. He replied:

I didn't like to think so, and I still don't like to think so. But just the fact that, you know, looking back on it now, we were in the room discussing somebody that she was involved with. That – again, it puts me in a very uncomfortable position, and had I known and had the relationship been fully disclosed, would I have said some of the things I said about the premier and about the performance of other cabinet ministers? Probably not.

Mr. Ramsay acknowledged that he is not personally aware of any exchange of information occurring between the Premier and Ms. Russell.

Mr. Ramsay said that animosity between regular members and cabinet culminated in February 2009 with a motion in the House to remove the entire cabinet. He said there were a number of issues about the government's performance that caused the motion to come before the House including the relationship between Mr. Roland and Ms. Russell which was an integral part of the motion. The motion did not pass.

Mr. Ramsay said that the failure to disclose the relationship is to him the most important aspect of this inquiry. He explained:

It's just the sheer fact that there's no disclosure to members that that relationship was intact and in place for that period of time

while committee members were doing our jobs in committee meetings.

He added that in his view the failure to disclose the nature of the relationship compromised the integrity of the institution for a period of four months. He said it is his view that the reason this inquiry is being held is to determine whether what happened during those four months, when there was a failure to disclose the nature of the relationship, was wrong. The “crux” he said of why we are here is whether “what happened is wrong.”

F. The Evidence of Premier Floyd Roland

Premier Roland outlined the responsibilities that have rested with him over the past 14 years during which time he has been a Member of the Legislative Assembly. He has spent several years as a regular member and several years as a member of the Executive Council. He has been Premier since October 2007. During his time as a regular member he at one time served as the Deputy Chair of the committee that is now known as the Priorities and Planning Committee. His description of the role of Standing Committees and in particular that of the Priorities and Planning Committee accords with the evidence of Mr. Mercer and Ms. Russell.

Premier Roland said it was not uncommon at Priorities and Planning to deal with the performance of ministers. He said from time to time the committee does request the presence of the Premier to answer questions. He said that during the current Assembly he has been called a number of times to deep-in-camera meetings to discuss ministerial performance including his own. He said that it is understood that discussions in Priorities and Planning are confidential but he said in practice that understanding was not always honoured.

The Premier talked about his impression of how the current Assembly has been operating. He made mention of the motion by some regular members, expressing non-confidence in the entire Executive Council, that came to a vote on February 6. The motion was defeated. He said right from the start of the first session of the 16th Assembly the tone of questioning was confrontational. There was talk of defeating the first budget and from there “it started getting quite adversarial.” He said just before or just after Thanksgiving weekend in October 2008 he was visited in his office by the Chair and Deputy Chair of the Priorities and Planning and was told:

I would have one of two things done to me, that is I would have a motion of censure placed on me or a motion to revoke my appointment as Premier of Northwest Territories.

He said that they did manage to work their way through this scenario and get over it without a motion of censure but he saw this as part of what was building up that did in fact end with the non confidence motion. It was soon after the visit to his office that a full caucus meeting was held in October. The purpose of the meeting, as he saw it, was to discuss practices relating to motions like the ones with which he had been threatened and motions giving ultimatums to ministers. His view was that matters of that kind should be aired and resolved in Full Caucus. He said that during that October meeting he had stated that he was not able to work with Ms. Groenewegen as chair of Priorities and Planning because:

I was to the point where I did not believe and trust that information I was giving or information we were sharing with each other was getting back to committee in the appropriate manner.

Premier Roland acknowledged that in the early part of July 2009 he had approached Ms. Russell about her leaving her Clerk's position and coming to work in the Executive Branch of government. She declined the offer. He said however that that turned out to be the start of a personal relationship with her in the sense of "how are you doing." Before that they had a more distant relationship. It moved on to "a cup of tea here and there." July 24 was the first time that they actually spent time outside of the Assembly so they could talk together. He said in the last week of September the relationship became an intimate one.

The Premier was asked whether he had notified anybody in the Legislative Assembly about this relationship with Ms. Russell, who held the position of the Principal Clerk of Committees. He said that on the morning of November 18 he gave the information to his Principal Secretary. He then told the Cabinet Secretary and the members of Cabinet who were then present in the building. He said that it was on the evening before (November 17) that, in his mind, he knew the relationship with Ms. Russell was not going to turn back so he approached his spouse to tell her and that there was a need to pull the family together to discuss the change that this would bring to them. He was firm in the believe that the family came first and he had expressed that to Ms. Russell and told her on the evening of November 17 that he would be informing his staff the next day.

The Premier left on November 18 for a business trip to British Columbia. Before the day was over he telephoned the Speaker to give him the information about the relationship. He said the Speaker responded by saying that he didn't think all the members of the Assembly would be surprised. That trip to British Columbia is shown in the Premier's travel itinerary from September to November that was filed as an exhibit.

The only previous occasion that the Premier and the Speaker had talked on this subject was in late September or early October. They met in the Speaker's office. The Speaker expressed a concern that the Premier may have been trying to recruit Ms. Russell. The Premier confirmed he had tried to do that but without success. He said the Speaker responded by saying that was good because there was some talk that there may have been a possible affair but before the Premier could respond, the Speaker said he would not have any of that kind of discussion and that ended it. He said if the Speaker had asked him if there was a relationship he would have told him that "one is developing".

Immediately on his return to Yellowknife from his trip out of the Territory Premier Roland sat down with his spouse, his sons and daughter and talked out the change that was taking place in their family life. That was on the evening of November 24.

Premier Roland was asked whether, through all this, he had any concern about Ms. Russell's role as a Clerk of the Assembly. In reply he referred to what he had told the Conflict of Interest Commissioner and said:

I knew I would have to deal with this matter knowing that we have a ruckus, some would say a ruckus assembly, it's been adversarial, that even the role itself we would have to address this matter of the working relationship, and I as well looked on my previous time as a member. I mean, we all learn from our experiences in the Legislative Assembly and what is going to be accepted by members or not.

He said that when this first arose he thought an option, based on his consideration of what he thought was a precedent, could be the re-alignment of the duties of Ms. Russell, where if he were in front of a committee she would have no part in that. He said he had concluded that was no longer an option because of "the raised political nature that's gone on since then."

He said that all through this Ms. Russell, honoured her word and shared no information with him. He was asked the following questions and gave the recorded answers:

Q: Just a couple of other questions, Mr. Roland. Did you at any time obtain any information from Patricia Russell about standing committee discussions?

A: No, I did not.

Q: Did you at any time obtain any confidential information from Patricia Russell with respect to anything that was being discussed at the Legislative Assembly?

A: I never received any information from Ms. Russell regarding confidential discussions of committee or anything else, for that matter, to do with the Legislative Assembly, besides the normal going on business when I had to show up before committee and so on.

The Premier was asked about a conversation with Mr. Abernethy relating to his knowledge of committee room discussions. He acknowledged a conversation in which he told the member that he had a long memory and he was prepared to use it. He acknowledged that he had told Mr. Ramsay that he was aware of an exchange between Mr. Ramsay and Ms. Groenewegen in the context of one of his ministers. He was definite that what he knew about that exchange had not come to him from Ms. Russell. He indicated the information may have come from one or more of his ministers who had been in discussion with other members.

Premier Roland was asked if he didn't really think this entire matter was about the Premier of the Northwest Territories and the Clerk of Committees and not about Floyd Roland and Patricia Russell. He replied:

I've often thought since this had come out about Floyd Roland as a person, as the father of children, and as premier of Northwest Territories. I've tried to separate myself and say purely as the premier in hindsight maybe I should have come sooner, but can we expect any individual in any profession to remove themselves from who they are?

...as I told the conflict of interest commissioner, that I realized I had to deal with the work situation, but at the same time as a person, as a man involved in a 20-year relationship, bringing it to an end to start a new one, and who I am, I had to deal with that issue first. That's always been my process. That's always been front and centre with me, and I followed that through, and again,

I'm sorry if members felt that was -- I chose the person first in this case.

He was asked if it had not occurred to him to reveal the existence of the relationship to the Speaker in confidence prior to the commencement of the October session of the Assembly so that appropriate arrangements could be made to find employment for the Principal Clerk of Committees outside of the Legislature or outside her role as Clerk. Premier Roland replied that "in hindsight I probably should have spoken to him sooner" but he said he had to deal with his family first. He was asked about the involvement of Ms. Russell, during the October session, in the 3 points of order referred to in my review of the evidence of Ms. Russell. He said he was aware that as a Clerk she would be potentially involved. He said he was dealing with members in the House at a time of heated political environment and his focus was on the political persons involved and he acknowledged that again, after the fact, hindsight being 20/20 he considered those possibilities.

He told of a conversation with Ms. Bisaro, after a caucus meeting that had occurred on December 5, relating to what is, in a situation such as this, the right time to tell people you are involved with about the new relationship. He said we came to the conclusion "there is no real right time to do this."

On December 5 Premier Roland attended a meeting of Full Caucus, called for the purpose of discussing the relationship issue. He said he explained his position just as he had done in giving his evidence before this hearing. He concluded that the clear majority of members had indicated that they had work to do, that this was his personal life and that should be the end of it.

The House resumed sitting in late January or early February. By this time the Premier thought, based on what he had heard, that there probably would be a motion of non confidence in him but he was surprised to learn it was to censure the entire cabinet. As I have noted, it went down to defeat on February 6th. The Premier said that he believed the driver of the motion was his relationship with Ms. Russell but he knew there also were concerns with other ministers.

On the next sitting day of the House, February 9, the Premier made a Minister's Statement entitled "Moving Forward in the 16th Legislative Assembly". Included was the following paragraph:

I know the issue of notification of changes to my personal life is a concern for some members. I want to apologize for the effect this has had on the work of this Assembly.

He was asked about how that apology related to the arrangement of his affairs in a way that maintains public trust, integrity, objectivity and impartiality in his work as Premier. He replied:

Did I not arrange my affairs appropriately? I am the one who came forward and said, this has occurred, and the necessary changes were made following that. Now, should have I done it sooner? In hindsight I probably should have come sooner.

The letter to the Conflict of Interest Commissioner followed on February 16.

G. The Evidence of Speaker Paul Delorey

Mr. Delorey has been a member of the Legislature since 1999. He has been the Speaker of the Assembly since 2004. He attended at this hearing under subpoena. He described the role of the Speaker:

The role of the Speaker is to preside over all proceedings of the House and to enforce the rules of the House, also to protect the interest of all members in their work within the Assembly. I also have a role to play in all aspects of the operations of the Legislative Assembly building and the precincts, which I do through the help of the office of the Clerk.

Speaker Delorey described a brief conversation he had had with the Premier during, he believes, the first week of October 2008. It occurred in the Speakers office and took place at his request. Mr. Delorey said that he had heard a rumour that Premier Roland had been seen in the office of Patricia Russell on a number of occasions and sometimes for extended periods of time. He said he had a concern about whether the Premier was trying to recruit Ms. Russell for the Executive Branch and it was of concern to him that the House may have been on the verge of losing one of its table officers. He said the Premier advised him that recruitment was the

purpose of his attendance in the office of Ms. Russell but the Speaker said he was assured by Premier Roland that Ms. Russell would not be moving on as she was very happy in her current position. With that assurance, Mr. Delorey explained what happened next:

I made a statement to Mr. Roland to the effect that the reason I was having this conversation was that there was only three possible reasons why I could see the Mr. Roland would be in Ms. Russell's office. And those were that he was trying to recruit her for the Executive branch of government; two, that she had a political issue that she wanted to deal directly with the premier on; and the other one was that they were having a relationship.

Mr. Delorey said that concluded their discussion on that matter. He said that at that point he had no reason to believe that Ms. Russell and Mr. Roland were having a relationship.

During cross-examination with respect to that early October meeting, the following exchange took place between counsel and Speaker Delorey:

Q: Is it possible, Mr. Delorey, that your words during the course of that meeting might have been along the lines of "I've heard rumours about a possible affair. I want nothing to do with that kind of talk?" Do you remember saying those words?

A: I would say there is no chance that those were my words.

Q: Did you specifically ask Mr. Roland as to whether this was in fact the situation?

A: I did not ask a direct question. I made – the three statements that I made as to why he may have been in Ms. Russell's office were more of an observation more than a question.

The Speaker confirmed the Premier's evidence of a telephone call to him in November from Vancouver. He said the Premier told him that he and Ms. Russell were in a relationship and they were prepared to go public with it. The Premier told Mr. Delorey that he wanted to communicate this to him before he heard it from someone else. Mr. Delorey said the Premier added that when word got out members would be surprised. Mr. Delorey said his response was that not all members would be totally surprised and he explained that he had said that because he was aware by then that some members were suspecting that there was a relationship going on.

The witness was questioned about possible leaks from committee meetings. He said members do worry about information getting out and back to ministers. He was asked whether prior to his November conversation with the Premier members had communicated concerns to

him about leakage of information from committee proceedings. He said it was not until after the relationship became known that it came up about the leakage of information. The Speaker said that he was not aware of any information passing between Ms. Russell and Mr. Roland.

H. Was there a Contravention?

The issue I must resolve, as framed in the Terms of Reference of this Inquiry, is whether Floyd Roland, the M.L.A. for Inuvik Boot Lake performed his duties of office and arranged his private affairs in such a manner that he failed to maintain public confidence in his integrity, objectivity and impartiality as a result of entering into an intimate relationship with the Principal Clerk, Committees of the Northwest Territories Legislative Assembly in the summer and/or fall months of 2008 without the timely disclosure of that relationship. If there was that failure by the member for the reason stated then it follows there was a contravention of section 75(1)(a) of the Legislative Assembly And Executive Council Act.

I have on preceding pages made an extensive review of the evidence so that the functioning of the Legislative Assembly, its members, committees and officers as well as the sequence of events as they unfolded from July 2008 onwards will be clearly understood.

The totality of the following factors recorded in the evidence that I have reviewed causes me to conclude that the contravention to which I have referred has in fact occurred.

- The sensitive role of the position of Principal Clerk of Committees held by Ms. Russell that made her privy to confidential committee discussions that sometimes addressed shortcomings, including criticisms of members of Executive Council of which Premier Roland was a member.
- The Immediate removal of Ms. Russell from her position as soon as the authorities were advised of the intimate relationship. Ms. Groenewegen expressed it well when she said, referring to Ms. Russell's removal, "...the very fact that that occurred, you know, speaks to whether or not there was an acceptable arrangement." All nine witnesses who testified at the hearing recognized that it

was both inappropriate and unacceptable that Ms. Russell's employment continue uninterrupted in light of her intimate relationship with Premier Roland. While Mr. Mercer did not give evidence on this point, Ms. Russell's evidence relating to her discussions with him on or about November 20 leaves no doubt that he recognized the responsibility he had to immediately address the matter and why that was so.

- The reasons for that inappropriateness and unacceptability were expressed by all of the complainants but are captured vividly and with reality in the passages recited in my review of Mr. Bromley's evidence which I repeat:

They had sworn an oath to an institution, and yet they had all the loyalties that go with an intimate relationship. And that to me was the breach of trust.

...

With her being in this situation of conflict where she had two loyalties, one to her intimate partner and one to the institution, I would never totally have confidence in what side of the fence she might fall on, being human.

- The opportunities that Mr. Roland had in the month of October to disclose his relationship and seek assistance in having suitable arrangements made to find appropriate employment for Ms. Russell outside of the Legislature. Among others, the following situations should have been seen by him as opportunities to come forward:

- When he knew that Ms. Russell would be potentially involved in the Points of Order referred to in her evidence: The first was raised on October 7 and like the other two had direct reference to Premier Roland and his participation in the proceedings of the House.

- When the Chair and Deputy Chair of Priorities and Planning visited his office around Thanksgiving weekend with the message they carried which should have made him realize that the adversarial environment, of which he was already aware, was sure to get worse the longer he kept the relationship secret between himself and Ms. Russell.
- When in the first week of October the Speaker raised with him his association with Ms. Russell, regardless of the differences in how they each remember the brief conversation.

Notwithstanding all of these factors that should have been apparent to Premier Roland, particularly the opportunities to disclose his relationship in early October, he chose to continue it in secret for another six weeks. Once he passed up those opportunities, it is my opinion that he foreclosed the possibility of any subsequent assessment of his actions relating to his disclosure from being judged as having occurred in a timely way. The fact is he did not make the disclosure until he was satisfied that his relationship with Ms. Russell had cemented into a permanent one. What of course was wrong with that was that his primary responsibility to his colleagues in the House, the democratic institution they serve and the maintenance of public confidence and trust of those he was elected to lead took second place during that period of time.

In a thoughtful and well reasoned closing submission Ms. Bisaro, on behalf of the complainants, in a manner that was devoid of any adversarial flavour, made the same point in the following words:

Mr. Roland's commitment to his family apparently shown by the lack of disclosure of the relationship until he decided it was a lasting one, while commendable for the family values it may reflect, disregards his obligations and duties to the people of the Northwest Territories and the institution of public government. He had opportunities to amend his travel plans and business

commitments to make it a priority to deal with his personal situation, to advise his colleagues and family, but he chose not to. We believe it not only contributes to the loss of public confidence and trust, but also shows a lack of respect for all.

...

The failure of the premier to understand the impact that the affair would have on the effectiveness of our institution and the failure to disclose it even to the Speaker, who had the ability to remedy the situation and would have treated it with the sensitivity it deserved, was in our opinion wrong, and we seek your confirmation.

In this section of my Report I have given that confirmation and the reasons for it with the result that the contravention referenced in the Terms of Reference for this Inquiry is found to exist. That is to say Floyd Roland, the M.L.A. for Inuvik Boot Lake performed his duties of office and arranged his private affairs in such a manner that he failed to maintain public confidence in his integrity, objectivity and impartiality as a result of entering into an intimate relationship with the Principal Clerk, Committees of the Northwest Territories Legislative Assembly in the summer and /or fall months of 2008 without the timely disclosure of that relationship.

In my judgment the concern of the complainants that prompted their complaint to the Conflict of Interest Commissioner and which in turn resulted in this Inquiry was a fair and reasonable one to be taken to the Commissioner seeking confirmation of what they believed to be wrong.

I. Disposition

Counsel for Premier Roland was unsuccessful in convincing me that I should find that a contravention had not occurred. Realistically, after presenting her position on that point, she took advantage of the only opportunity open to her to discuss the options open to me in the event of finding that a contravention had occurred. Rather than me recommending to the Legislative Assembly the imposition of a punishment as provided for in Section 106(1)(b) of the Act she submitted that my focus ought to be on Section 106(1)(a)(ii) which sets out reasons why, notwithstanding a contravention of the provisions of the Act, the complaint should be dismissed. This requires a consideration by me of whether the contravention I have found to exist was committed by reason of an error in judgment made in good faith. The Act provides that such a

finding must lead to dismissal rather than the imposition of punishment. I thank Ms. Peterson for her assistance and the professional manner in which she made her presentation.

Mid September to mid November were busy months for Premier Roland as he attended to the many responsibilities that occupy the time of one possessed with the honour of being the leader of one of the vast Territories of the Northern part of our country. In this time frame, besides two trips from Yellowknife to his distant constituency in Inuvik and two business trips to Norman Wells he was required to travel extensively across the country including meetings in Alberta, Nova Scotia, Newfoundland, Quebec and to attend a first ministers conference in Ottawa. This was the time that his personal relationship with Ms. Russell moved from a personal one to one of intimacy. The emotional strain that he had been through was evident when he gave his evidence. There is neither a book nor a set of guidelines to follow in order to determine when to make the disclosure of such a relationship. As he said, he and Ms. Bisaro concluded in their discussion "there is no real right time to do this." In my assessment finding the answer to that dilemma all comes down to the application of one's own judgment.

In my view Premier Roland made an error in judgment, as he weighed competing interests, the pros and cons and decided not to make the disclosure until he was satisfied that his new relationship was going to be a permanent one. For the reasons I have explained I have concluded he was in breach of the identified section of the Act when he did so. However I have also concluded that Premier Roland had an appreciation of the error he had made when he posed the question during the presentation of his evidence of whether he had arranged his affairs appropriately. In answering his own question he acknowledged that in hindsight he probably should have come forward sooner with his disclosure. As he spoke, his sincerity was both apparent and real. In making that acknowledgment, in the manner that he did, he left me with no doubt that his error of judgment was one made in good faith


What occurred here is, I believe, the type of situation that the legislators of the day had in mind when they placed section 106(1)(a)(ii) in the Act. It follows that the complaint is dismissed.

I am hopeful that my prompt delivery of this Report will allow for the Speaker, immediately upon receipt, to lay it before the Legislative Assembly in sufficient time for debate

on it to occur before the Assembly rises late next week on the conclusion of its fall sitting. I would hope that the tone of that debate will reflect the civility which prevailed at this hearing and that when the Assembly opens in the New Year it will be for an amicable and productive session.

My sincere thanks to Commission Counsel, Glen D. Tait and his assistant Dana Webster for so efficiently marshalling the evidence and presenting a thorough and balanced review of that evidence in their closing summation. Also my thanks to those who assisted with the logistics of the proceedings.

Victoria, B.C.
October 28, 2009



Hon. Ted Hughes O.C., Q.C.
Sole Adjudicator