

24 April 2025

File No. 5758-14

The Honourable Shane Thompson, Speaker
Legislative Assembly of the Northwest Territories
Box 1320, 4570 - 48th Street
Yellowknife, NT X1A 2L9

By email

Dear Mr. Speaker:

Supplemental Report about Costs relating to the complaint by Jennifer Patterson that Richard Edjericon, MLA for Tu Nedhé-Wiilideh breached the MLA's *Code of Conduct*

Pursuant to subsections 102(8) and (9) of the *Legislative Assembly and Executive Council Act* (the "Act"), I am making this Supplemental Report to recommend that the Legislative Assembly partially reimburse Ms. Patterson for the legal costs she incurred related to the making and investigation of her complaint that Mr. Edjericon breached the MLA's *Code of Conduct*.

When the Legislative Assembly amended the Act in 2022, it expanded the role of the Integrity Commissioner—making formal and expensive inquiries by a Sole Adjudicator less likely—and also gave the Integrity Commissioner discretion in an appropriate case to make a recommendation with respect to costs.

In my judgment, this is an appropriate case in which to make such a recommendation. It would be unfair for the Board of Management to pay all or some of Mr. Edjericon's costs, but not pay a portion of the complainant's costs, especially in the particular circumstances of this complaint which was justified and affected her personally.

The previous legislative framework

Prior to the 2022 amendments to the Act, the former version of the Act provided that the Integrity Commissioner could only dismiss a complaint or direct that an inquiry be held before a Sole Adjudicator.

A Sole Adjudicator could recommend that the Legislative Assembly order a member found to be guilty of contravening the conflict of interest rules or the *Code of Conduct* to pay costs in an amount determined by the Sole Adjudicator: s. 106(1)(b)(vii).

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Subsection 108(1) provided that the reasonable costs of a member complained about would be paid by the Legislative Assembly to the extent provided for in a policy established by the Board of Management.

- 108(1) The reasonable costs of a member or former member complained of pertaining to a complaint under this Part [the conflict of interest rules] or the Code of Conduct shall be paid in the circumstances and to the extent provided for in a policy established by the Board of Management.

The Board of Management has had a policy that it would pay for outside legal counsel to assist a member in dealing with a complaint (currently at the rate of \$325 per hour, with any excess payable by the member). The policy applies to both investigations by the Integrity Commissioner and to inquiries in front of a Sole Adjudicator, and applies whether the complaint is dismissed or upheld.

Subsection 108(2) also provided two circumstances in which a complainant's costs could be paid:

- (2) The reasonable costs of a complainant pertaining to a complaint under this Part [the conflict of interest rules] or the Code of Conduct shall be paid
 - (a) if an inquiry is directed to be held before a Sole Adjudicator and he or she considers that the costs of the complainant should be paid; and
 - (b) in the circumstances and to the extent provided for in a policy established by the Board of Management.

The Board of Management did not establish a policy under (b) specifying the circumstances or the extent of the costs which would be paid to a complainant. As a result, a complainant could only receive reimbursement for some or all of his or her costs if the Sole Adjudicator made a direction under (a).

The 2022 amendments

The 2022 amendments expanded the options available to the Integrity Commissioner after an investigation—namely, to be able to refer the matter to an alternative dispute resolution process, or to be able to find a member guilty of contravening the conflict of interest rules or the *Code of Conduct* and to recommend one or more punishments to the Legislative

Assembly (including an order for the member to pay costs)¹—as well as retaining the ability to refer the matter to a Sole Adjudicator.

In addition, the 2022 amendments enacted the following provisions about costs relating to an investigation by the Integrity Commissioner:

- 102(8) The Integrity Commissioner may invite a party to a complaint or the Board of Management to make submissions, with respect to costs, before or after the submission of the report [about the merits of the complaint] to the Speaker under subsection (4).
- 102(9) Where the Integrity Commissioner hears submissions on costs after they have submitted the report to the Speaker under subsection (4), the Integrity Commissioner shall submit a further report to the Speaker with a recommendation on costs.

Identical provisions were also added to section 106 to permit a Sole Adjudicator holding an inquiry to make a recommendation on costs: 106(1.1) and (1.2).

The 2022 amendments did not change section 108 (described above).

Ms. Patterson's application for Costs

I made my Report to the Legislative Assembly about Ms. Patterson's complaint about Mr. Edjericon's conduct on October 8, 2024. On October 21, the Legislative Assembly received my Report and accepted my recommendation that Mr. Edjericon be reprimanded and fined \$2,500. Mr. Edjericon accepted the reprimand and paid the fine.

In January 2025, I received a request from Ms. Patterson's legal counsel to consider an application to pay her costs pursuant to subsection 102(8).

I asked legal counsel for Ms. Patterson (Austin Marshall), Mr. Edjericon (Steven Cooper, KC) and the Management Board (Toby Kruger) to make submissions about whether it would be appropriate to make a recommendation about costs in this case.

- Mr. Marshall submitted on behalf of the complainant that there should be such a recommendation because of the nature and importance of the matter; the effect of the conduct on Ms. Patterson and other caregivers in the

1. Because subsection 102(6) provides that the Integrity Commissioner can recommend the same punishments as the those which can be recommended by a Sole Adjudicator under subsection 106(1)(b) which in paragraph (vii) includes an order that the member pay costs in an amount determined by the Sole Adjudicator.

community; the complexity of the matter, and the need to refute Mr. Edjericon's responses in considerable detail; the need to deal with Mr. Edjericon's allegations about the complainant's competence and character; as well as the finding that Mr. Edjericon had breached the *Code of Conduct*. It did not seem right that an MLA could respond to a complaint without any cost to himself while the member of the public who advances the complaint is left to pay their costs out of their own pocket.

- Mr. Cooper submitted on behalf of the member, that Mr. Edjericon's conduct was motivated by the wish to improve the delivery of health services; he needed to have legal representation in order to answer the complaint; there was no obligation or need for Ms. Patterson to use legal counsel for making her complaint; the matter did not go to an inquiry in front of a Sole Adjudicator, so subsection 108(2) had no application; and he has already been subject to discipline by the Legislative Assembly.
- Mr. Kruger submitted that the Board of Management took no position on whether I should exercise my discretion under section 102(8), but reserved its position on the amount of costs if I decided to exercise my discretion.

After considering the submissions, I decided that it was appropriate to make such a recommendation in this case, and invited counsel to provide submissions about the amount of costs being sought and by whom they should be paid.

- Mr. Marshall provided copies of his invoices to Ms. Patterson. He submitted that MLA Edjericon and the Legislative Assembly should be jointly responsible for the payment of costs. The Legislative Assembly should take responsibility because it has authority over the conduct of MLAs; misconduct undermines the integrity and credibility of the Assembly as a whole; and a costs order will remind members of the Assembly and the public of the assurances inherent in the *Code of Conduct*.
- Mr. Cooper submitted that an award of "costs" against Mr. Edjericon would constitute an additional penalty beyond the reprimand and fine already imposed on him by the Legislative Assembly. Any costs should be payable by the Legislative Assembly, which has created the rules against conflicts and the *Code of Conduct*, and it should bear most if not all of the costs associated with disciplining its members (as the Court of Appeal of Alberta has ruled should be the case for disciplinary proceedings in a self-governing profession).

- Mr. Kruger noted that the term “costs” is not defined in subsection 102(8). He submitted that it should have a similar meaning as in litigation where an unsuccessful party has to pay costs to the successful party (usually only on a partial indemnity basis). Because the Legislative Assembly was not a party to the investigation and did not make submissions, it should not be ordered to pay costs. In addition, the costs referred to in subsection 102(8) are distinct from the reasonable costs of a member and a complainant referred to in section 108. The Management Board has not adopted a policy under subsection 108(2)(b) with respect to a complainant’s costs, so that provision is not engaged; nor is subsection 108(2)(a) because there wasn’t an inquiry in front of a Sole Adjudicator. Finally, the Legislative Assembly is not akin to a professional regulator, and is not responsible for the conduct of MLAs. It has provided a system for facilitating complaints about members, and pays for the Integrity Commissioner as part of this system.

No one disputed the number of hours, rates or amounts charged in Mr. Marshall’s invoices, which on my review were entirely justified in light of the issues involved in this particular complaint.

Decision

As noted in my October 8, 2024 Report,

[50] By enacting Part 3 of the *Legislative Assembly and Executive Council Act*, the Assembly provided a mechanism for the Integrity Commissioner to investigate complaints on its behalf about perceived breaches of the [Act or] *Code*, and (if appropriate) to make recommendations to the Assembly about sanctions which the Assembly could impose in exercising its disciplinary authority with respect to Members.

In 2022, the Assembly amended the Act to increase the scope of what the Integrity Commissioner can do instead of sending a matter to an inquiry in front of a Sole Adjudicator (which tends to be formal and expensive). At that time, the Assembly also enacted subsection 102(8) to give the Integrity Commissioner discretion to receive submissions with respect to costs from a party to a complaint or the Management Board, as well as discretion under subsection 102(9) to make a recommendation to the Assembly. The Assembly did not define “costs”, which items could be included, or by whom the costs might be payable or to whom. Rather than laying down hard-and-fast rules, the Assembly decided to leave the appropriateness of making any recommendation about costs in any particular case to the discretion of the Integrity Commissioner. In all events, the Assembly is the ultimate decision-maker.

I wish to emphasize that the discretionary nature of subsections 102(8) and (9) means that complainants do not have a right to be reimbursed for their costs in making and addressing their complaint, even if the complaint is found to be substantiated. In many cases, the nature of the complaint would not require legal assistance. The Integrity Commissioner is only likely to exercise the discretion in very unusual and particular circumstances.

In my view, Ms. Patterson's complaint is such a circumstance. MLA Edjericon's conduct caused Ms. Patterson particular and personal harm in her employment. I found the representations from her legal counsel to be helpful in understanding what occurred as well as addressing Mr. Edjericon's responses, and coming to the conclusion that he had breached the *Code of Conduct*. In my view, it would be unjust and unfair for the Assembly to pay Mr. Edjericon's legal fees (even though he was found to have breached the *Code*) but make Ms. Patterson pay her own.

With respect to the amount to be reimbursed, my recommendation is for the Assembly to reimburse Ms. Patterson for her legal fees for the number of hours spent by Mr. Marshall using the \$325 hourly rate which the Assembly pays for a member's legal counsel.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'D. Jones', with a long horizontal flourish extending to the right.

David Phillip Jones, K.C.
NWT Integrity Commissioner