

YUKON TERRITORY
CONFLICT OF INTEREST COMMISSION

ANNUAL REPORT
May 1996 - June 1997

The Hon. E.N. (Ted) Hughes, Q.C.
Commissioner
June 24, 1997

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I. INTRODUCTION

This is the first annual report of the Conflict of Interest Commission established by the *Conflict of Interest (Members and Ministers) Act*. The *Act* received assent on May 3, 1995, was amended on April 25, 1996 and came into force on May 2, 1996. Section 19(1) of the *Act* requires delivery of this report to the Speaker of the Legislative Assembly by the 30th day of June, 1997. I am presently the sole Commissioner pursuant to appointment made by the Legislative Assembly on April 25, 1996, effective on the 2nd day of May 1996 and continuing from that date for a period of three years.

Pursuant to an Order in Council passed on the 15th day of April 1996, I was appointed as a Board of Inquiry under the *Public Inquiries Act* to inquire into alleged conflicts of interest identified in the Order in Council and I was directed to report on those matters by June 30, 1996 to the Commissioner in Executive Council. That was done on the 29th day of June 1996. As that assignment was not carried out under the *Conflict of Interest (Members and Ministers) Act*, further reference to it in this Report is neither required nor appropriate.

II. COMMISSIONER'S RESPONSIBILITIES UNDER THE ACT

It is important to appreciate the circumstances that will place a member and a minister in a conflict of interest situation. Those circumstances are when and if he or she:

- "2. (a) makes a decision in the execution of his or her office, or
- (b) participates in the making of a decision in the Legislative Assembly or in Cabinet, or
- (c) makes representations to another Member or Minister about what decision that Member or Minister should make, or
- (d) discharges any other official function in the execution of his or her office

and at the same time knows or ought to know that in the decision or function there is the opportunity, or the reasonable appearance of an opportunity, for the Member or Minister to further his or her own private interest.”

The following other situations, with some exceptions noted in the *Act*, will also put a Member or Minister in a position of conflict of interest:

- (a) use of information to further his or her own private interest that is not available to the general public and that has been acquired by virtue of the office held by the Member or Minister,
- (b) influencing a decision to be made by another person to further his or her private interest,
- (c) subject to receipt of gifts given in accordance with official protocol or conventional practice, accepting a fee, benefit or gift in connection with performance of his or her public duties,
- (d) failure to comply with the annual disclosure requirements of s.7 of the *Legislative Assembly Act*,
- (e) Ministers engaging in business or employment that is likely to conflict with the Minister’s duties of office,
- (f) Members who, as former Ministers, within six months of holding ministerial office, accept a contract or benefit from government,
- (g) Ministers violating a rule of conduct set out in the Code of Ethics established by Order in Council, the Executive Council Code of Conduct regarding Conflict of Interest or the Ministerial Gift Policy.

To assist members in avoiding the situations described above, the Commissioner is required to advise Ministers and Members, who request advice, on factual situations that they bring to him. With reference to that provision, I wrote to all members of the House on December 6, 1996, advising that:

“If you have any concerns ... you can certainly telephone me at any time for the purpose of discussing the matter If you require a formal opinion on which you can rely for all future purposes, it will be necessary for you to write to me, setting out the facts and circumstances of the situation that causes you concern, and it will then be my responsibility to write an opinion on the matter and to forward it to you.”

I cannot overemphasize that advice. I am available for telephone conversations with Members and Ministers at any time in order to assist them, but if an opinion is required on which the Minister or Member can rely for all purposes, including quoting in the House and elsewhere, it is necessary that the request for the Commissioner's advice be made in writing and that the request outline the circumstances of the situation that gives rise to the request for the Commissioner's advice. The Commissioner is bound to respond in written form.

The Government Leader can also request advice from the Commissioner about whether or not a Minister would be in a conflict of interest situation in a particular fact pattern.

An additional and important responsibility of the Commissioner is to investigate complaints made by a Member that another Member or Minister is or was in conflict under the *Act*. Where such an investigation is carried out, the Commissioner is required to report and make recommendations to the Legislative Assembly. Over the past year I have not been required to conduct any investigations pursuant to this provision of the *Act*.

The foregoing summarizes the main thrust of the Statute. There are, however, several other provisions of the *Act* that have not been an issue since enactment. I will comment on some of those sections in subsequent annual reports to Honourable Members.

III. ACTIVITIES OF THE COMMISSIONER OVER THE PAST YEAR

In November 1996, I spent two days in Whitehorse interviewing Ministers and Members as well as meeting the caucuses of the three parties represented in the House and also conducting interviews with ministerial staff members where an appointment had been requested. The purpose of these meetings was to discuss with Members what I perceive to be their responsibilities under the *Act* and also to answer questions put to me by them. I believe the two days were well spent and were highly successful. I met with 16 of the 17 elected Members of the Legislature. The one absentee is explained by travel outside Yukon on ministerial business.

As a result of these meetings, five Members wrote to me in late 1996 requesting advice. I responded in writing to each of them before the end of the year. During 1997 I have received requests for eight opinions. I have given written opinions in seven of those instances. The eighth opinion is in the course of preparation and I anticipate it being delivered in July.

Under the *Act*, the request for an opinion and the advice given pursuant to it is confidential unless:

- (a) the Member, Minister or Government Leader consents in writing to the request or the advice being disclosed; or
- (b) the Member, Minister or Government Leader represents that he or she is acting in accordance with advice from the Commission, and a Member asks the Commission to disclose the request and the advice it gave.

Insofar as I am aware, the 12 written opinions I have given to date have been within the confidential provisions as stipulated in (a) above. The opinion I expect to deliver in July may well come within the provisions of (b) above, in that it involves a written request of a Member but with assistance in the formulation of the request by an Opposition Member. I was in Whitehorse earlier this month to gather sufficient background material to allow for the preparation of this opinion.

All Members are aware of my availability for consultation. If they, or members of the public, at any time are in any doubt of where I can be reached, the office of the Clerk of the Legislative Assembly will either direct those inquiring to me or, alternatively, relay messages to me.

It has been a distinct pleasure serving as the sole Commissioner under the *Conflict of Interest (Members and Ministers) Act* over the past 14 months and I look forward to continuing my duties and responsibilities under the *Act* over the coming year. My next annual report will be filed with the Speaker prior to the 30th day of June, 1998.

Respectfully submitted this
24th day of June, 1997.



The Hon. E.N. (Ted) Hughes, Q.C.
Commissioner of Conflict of Interest
for the Yukon