

**YUKON
CONFLICT OF INTEREST COMMISSION**

ANNUAL REPORT

**TO THE LEGISLATIVE ASSEMBLY
FOR THE PERIOD ENDING 31 MARCH 2003**

**David Phillip Jones, Q.C.
Commissioner
16 June 2003**

**Yukon
Conflict of Interest Commission**

ANNUAL REPORT

**to the Legislative Assembly
for the period ending 31 March 2003**

I was appointed to the Conflict of Interest Commission by unanimous resolution of the Legislative Assembly on 13 May 2002.

I am honoured to succeed Hon. E.N. (Ted) Hughes, O.C., Q.C., who was Yukon's first Conflicts Commissioner from 1996 to 2002. Mr. Hughes has provided me with all of his files, and has been of considerable assistance to me in assuming this position.

As required by section 19(1) of the *Conflict of Interest (Members and Ministers) Act*, this is my Report to the Legislative Assembly about the administration of the Act for the period ending 31 March 2003.

A. JURISDICTION OF THE COMMISSION

The Conflict of Interest Commission receives its authority under the following provisions:

- Section 7 of the *Legislative Assembly Act* requires Members of the Legislative Assembly to make full public disclosure of their private interests (including the private interests of their immediate families). To facilitate discharging this obligation, Members are required to file a disclosure statement on or before April 30th each year with the Clerk of the Legislative Assembly, and to keep that disclosure statement up to date. The disclosure statement is available for public inspection.
- The *Conflict of Interest (Members and Ministers) Act* defines what constitutes a conflict of interest; prohibits Members and Ministers from discharging any official function where there is an opportunity—or the reasonable appearance of an opportunity—for the Member or Minister to further his or her own private interest; defines and prohibits an abuse of office; regulates allowable fees, gifts and benefits; requires a copy of Members' disclosure statements to be provided

to the Conflicts Commissioner; prohibits involvement in any matter in which the Member or Minister has a conflict of interest; prohibits Ministers from certain business and employment activities; prohibits former Ministers from accepting contracts with the Government for a six-month period after leaving office; permits the Premier to make rules about conflicts of interest for Ministers (which section 15 identifies as those contained in the following bullet, until replaced); prescribes what is to occur if there is a conflict of interest; provides for complaints by Members, and investigations by the Conflicts Commissioner; and authorizes the Conflicts Commissioner to give confidential advice to Members and Ministers.

- The rules of conduct for Ministers, as identified in section 15(1) of the *Conflict of Interest (Members and Ministers) Act*, namely:
 - Schedule B to Order-in-Council 1981/85 contains the Code of Ethics for members of the Executive Council.
 - The *Executive Council Code of Conduct Regarding Conflict of Interest* tabled in the Legislative Assembly on April 6, 1981, which prohibits Ministers and the direct members of their families from entering into certain contracts with the Yukon Government; restricts their purchasing land from or selling land to the Yukon Government; and requires Ministers to file a separate ministerial disclosure statement with the Clerk of the Legislative Assembly.
 - The *Ministerial Gift Policy* established by Cabinet to take effect on October 19, 1994.

The *Act* contemplates that these rules may be superceded and new rules filed with the Conflict of Interest Commission, but this has not occurred to date.

- Part 13 of the *Public Service Act* which permits Cabinet to make rules dealing with conflicts of interest for Deputy Heads, which section 214(7) prescribes to be the following (until superceded):
 - The *Conflict of Interest Policy*, Policy 3.39 in the General Administration Manual, made October 27, 1994.
 - The *Directive on Post-Employment Restrictions*, Policy 1.14 in the General Administration Manual, made April 1, 1996.

To date, no other rules have been made and filed with the Conflict of Interest Commission with respect to Deputy Heads.

- Part 4 of the *Cabinet and Caucus Employees Act* which prohibits these employees from discharging any function where there is an opportunity—or the reasonable appearance of an opportunity—for the employee to further his or her own private interest; prohibits certain business and employment activities; provides for advice from the Conflict of Interest Commission; provides for party leaders to make rules of conduct.

To date, no rules of conduct have been filed with the Conflict of Interest Commission. Accordingly, section 19 of the *Cabinet and Caucus Employees Act* provides that the only applicable rule is:

- For cabinet employees, the *Directive on Post-Employment Restrictions*, Policy 1.14 in the General Administration Manual, made April 1, 1996.

B. ACTIVITIES BY FORMER COMMISSIONER DURING THE PERIOD FROM JULY 2001 TO 2 MAY 2002

The term of office of my predecessor, Hon. E.N. (Ted) Hughes, O.C., Q.C., ended on 2 May 2002 prior to his filing his sixth Annual Report, which would have covered the period from July 2001 to the end of his term.

I have reviewed his files, and report as follows:

Mr. Hughes received and responded to various inquiries from Members, Ministers, Deputy Heads, and cabinet and caucus employees. Under section 24 of the *Conflict of Interest (Members and Ministers) Act*, the content of his advice is confidential unless either (a) the person affected consented in writing to its being disclosed, or (b) the person affected represented that he or she was acting in accordance with advice from the Conflict of Interest Commission and a Member asked the Conflict of Interest Commission to disclose the request and resulting advice. Neither of these circumstances applies to any of the advice given by Mr. Hughes in the period under discussion.

On 29 November 2001, Mr. Hughes issued his Decision dismissing a complaint brought by Peter Jenkins, M.L.A. for Klondike, on 8 May 2001 against Hon. Pat Duncan, M.L.A. for Porter Creek South, with respect to alleged differential treatment about repayment of certain loans from the Yukon Government. Mr. Hughes's report was tabled in the Legislative Assembly on the date of its issue.

C. ACTIVITIES DURING THE PERIOD FROM 13 MAY 2002 TO 31 MARCH 2003

Prior to my appointment, I was invited to Whitehorse to meet with the Members' Services Board in late April 2002. At that time, I also had the opportunity to meet with many Members and Ministers, the out-going Commissioner (Mr. Hughes), and the Clerk of the Legislative Assembly (Patrick Michael) and his staff. This was an invaluable orientation.

After my appointment, I familiarized myself with my predecessor's files, and the disclosure statements which had been recently filed by Members and Ministers in compliance with the 30 April 2002 deadline.

In September 2002, Premier Duncan asked for my advice about a recent change in policy which the Government had implemented to allow Members, Ministers and Deputy Heads to make personal use of incentives acquired on government business. In the absence of approval by the Members' Services Board, it was my opinion that the use of such points for personal purposes would constitute a conflict of interest under section 3(1) of the *Conflict of Interest (Members and Ministers) Act* as an unauthorized benefit or gift in connection with a Member's or Minister's public duties. I reached the same conclusion with respect to the relevant provisions governing Deputy Heads. My opinion was made public, and the Government cancelled its revised policy and reverted to the former policy. In the course of my opinion, I made it clear that the mere fact that points were credited to a person's account does not constitute a conflict of interest; it is the *use* of such points for personal purposes which would constitute the conflict. There is obviously no difficulty with the use of these points for subsequent government travel. Some Members have chosen to include details in their annual disclosure statement about how many Aeroplan points they have acquired as a result of government travel. For my part, I will adhere to the same rule, and will keep track of the Aeroplan points accumulated on my travel as Conflict of Interest Commissioner, and will use these points for future Conflicts Commission business (or will pay for any unused points at the end of my term).

In late September, I attended the annual meeting of the Canadian Conflict of Interest Network in Regina, which brings together all of the federal, provincial and territorial conflict of interest commissioners. This was an excellent opportunity to meet the other commissioners and to learn how other jurisdictions are dealing with common issues.

In November 2002, a general election in Yukon resulted in a change of Government. I was able to travel to Whitehorse later that month. This provided an opportunity for me to meet them personally, and to review their obligations as Members both to avoid conflicts of interest and to file disclosure statements. Although the Cabinet had not yet been appointed, I discussed the additional obligations of Ministers with those members of the

majority party with whom I met, and indicated that I would expect Ministers to share their disclosure statements with their Deputy Heads and to rely on the latter to act as an early warning system to identify and avoid possible conflicts of interest. I repeated this expectation when I met with most of the Deputy Heads, as well as reviewing the conflict rules which apply to them. I also met with several employees (or potential employees) of the Cabinet or one of the caucuses, and discussed the provisions that would be applicable to them, as well as their own personal situations. The Premier-designate (Mr. Fentie), and I had the opportunity to discuss conflict of interest issues generally, as well as possible structural ways to avoid conflicts of interest by appointing alternate members of Cabinet to be able to act in the event that a particular Minister has a conflict of interest with respect to a particular aspect or issue arising in his or her portfolio.

In November, I also had the opportunity to meet with out-going Ministers to review the restrictions on former Ministers. Two issues arose which deserve comment:

1. Under sections 10 and 12 of the *Conflict of Interest (Members and Ministers) Act*, there is a six-month “quarantine period” preventing former Ministers from accepting a contract or benefit awarded, approved or granted by the Cabinet, a Minister, or an employee of a department of the Yukon Government¹—but the severance allowance for former Members is only three months. In my opinion, these two time periods should be made the same. Otherwise, former Ministers could be unfairly penalized economically.
2. Section 13 permits the Conflict of Interest Commission to “bless” a former Minister’s conflict of interest if it “is or would be so remote or insignificant that it should not disqualify the former Minister from accepting the contract or benefit in question”. The difficulty is that a particular conflict of interest (as defined in the *Act*) may not be objectionable in any way, but it might not be remote or insignificant. It would be helpful if the legislation granted the Conflict of Interest Commission a broader discretion to approve activities by former Ministers.

1. There are limited exceptions. One exception is if the former Minister is appointed as a public officer as defined in the *Financial Administration Act*, or to an office established by an Act (which would include a teacher). A second exception is if the conditions on which the contract or benefit is awarded, approved, or granted are the same for all persons similarly entitled.

There is an additional difficulty for a Minister who is on leave of absence from the public service pursuant to section 160(6) of the *Public Service Act* if defeated at an election. That person will not be entitled to pay as an M.L.A., but at the same time will not be able to resume his or her position in the public service until ceasing to be a Minister (which may be some time, particularly if there is a change in Government).

Under the *Executive Council Code of Conduct Regarding Conflict of Interest*, Ministers are required to file a ministerial disclosure statement with the Clerk of the Legislative Assembly within 30 days of appointment. With only two minor and inconsequential delays occasioned by absences from Whitehorse over the Christmas period, all Ministers filed these disclosure statements by the 30 December 2002 deadline.

In anticipation of the Members filing their disclosure statements by 30 April 2003, I again met with most Members towards the end of that month. Again, it was helpful to meet Members face-to-face, to familiarize myself with their affairs, and to address their questions and concerns. All Members met the deadline for filing their disclosure statements.

Throughout the period under review, I have been asked for advice on numerous occasions by Members, Ministers, Deputy Heads, cabinet employees and caucus employees. As noted above, section 24 of the *Conflict of Interest (Members and Ministers) Act* provides that the content of this advice is generally confidential.

I am pleased to say that there have been no complaints and no investigations during the last year.

As a result of my experience this past year, I intend to review the disclosure forms to make sure they align with the requirements in the relevant provisions affecting Members (on the one hand) and Ministers (on the other hand). I also contemplate preparing a plain-English guide to the conflict of interest provisions.

D. ACKNOWLEDGMENTS

I would like to publicly thank the Clerk of the Legislative Assembly, Patrick Michael, and his assistant, Sue Macdonald, for their very able, willing, effective and cheerful assistance to me—and to Members—in the administration of the conflict of interest legislation.

For the system to work well, it is important for everyone involved to keep the guiding principle in mind—namely, that Members, Ministers, Deputy Heads, cabinet and caucus employees must always put the public good above their own private interests, and be seen to do so.

E. CONTACT INFORMATION

I can be contacted as follows:

David Phillip Jones, Q.C.
300 Noble Building
8540 - 109 Street N.W.
Edmonton, Alberta
T6G 1E6

Phone: (780) 433-9000
Fax: (780) 433-9780
Email: dpjones@sagecounsel.com

All of which is respectfully submitted this 16th day of June 2003 by:

David Phillip Jones, Q.C.
Conflict of Interest Commissioner