

**YUKON
CONFLICT OF INTEREST COMMISSION**

ANNUAL REPORT

**TO THE LEGISLATIVE ASSEMBLY
FOR THE PERIOD ENDING 31 MARCH 2004**

**David Phillip Jones, Q.C.
Commissioner
25 June 2004**

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**to the Legislative Assembly
for the period ending 31 March 2004**

This is my second Annual Report as a member of the Conflict of Interest Commission, and covers the period from 1 April 2003 to 31 March 2004.

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. I receive a copy of the disclosure statements as filed, and the disclosure statements are available in Clerk's office for public inspection.
- The *Conflict of Interest (Members and Ministers) Act* (the "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 superseded and new rules filed with the Conflict of Interest Commission, but this has not occurred to date.

- Part 13 of the *Public Service Act* permits Cabinet to make rules dealing with conflicts of interest for Deputy Heads, which section 214(7) prescribes to be the following (until superseded):
 - 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* 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 DURING THE PERIOD FROM 1 APRIL 2003 TO 31 MARCH 2004

(a) Annual visit to Whitehorse in April 2003

In April 2003, I travelled to Whitehorse to meet with Members and Ministers prior to the April 30th deadline for filing their annual statements for 2002. Although the *Act* does not require Members or Ministers to meet with me on an annual basis, my predecessor and I have made ourselves available shortly prior to the filing deadline in order to be able to provide any assistance or guidance to Members or Ministers prior to filing their annual statements. While not all Members or Ministers have availed themselves of the opportunity to meet with me, most have. I believe such meetings provide both assistance and a level of comfort to all involved. I made a similar trip to Whitehorse in April 2004, and I expect to continue with this practice.

During my trip to Whitehorse in April 2003, I also took the opportunity to meet with the Deputy Heads. We discussed their obligation to avoid any real or apparent conflict of interest. We also discussed the system of having one or more alternate Ministers in place to deal with any matters with respect to which the Minister is prevented from being involved due to a real or apparent conflict of interest. In order for such a system to work effectively, the Deputy Heads need to be able to identify areas of real or apparent conflict of interest for their respective Ministers, so that the latter can be kept out of the decision-making process, with the matter in question being sent directly to a previously-designated alternative Minister.

I also met with a number of caucus and Cabinet employees during my visit to Whitehorse in April 2003.

(b) Advice during the year

Over the course of the year under review, various Ministers at various times sought my advice about whether a particular matter would or would not constitute a real or apparent conflict of interest, and if so what steps needed to be taken to avoid such a conflict. Except as provided in section 24 of the *Act*, my advice to Ministers is confidential. In some cases, my advice to Ministers has been put on the public record in accordance with the provisions of section 24. Whether or not my advice has been put on the public record, I believe that my advice has been followed by the Ministers in question without exception.

Similarly, various Members sought my advice during the year under review about whether a particular matter would or would not constitute a real or apparent conflict of interest.

In addition, during the year under review I provided advice to a number of persons who had either recently been appointed Deputy Head, or were contemplating taking such an appointment.

Finally, I have during the year provided advice to caucus or Cabinet employees.

(c) No complaints or investigations

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

(d) Issues to be considered

In the course of the past year, two issues have come to my attention which the Legislature might wish to address at some point:

1. While section 17(1)(a) of the *Act* gives me authority to advise former Ministers about whether they are or would be in a conflict of interest, the confidentiality provisions in section 24 do not explicitly apply to former Ministers. It would be helpful if section 24 were amended to refer to former Ministers and former Members.
2. In addition, while section 7(2) of the *Legislative Assembly Act* requires Members to file an annual disclosure statement with the Clerk, there is no provision that would permit a *former* Member to file anything with the Clerk (or for the Clerk to accept anything from a former Member). The same situation exists with respect to former Ministers. To the extent that the conflict of interest provisions apply to former Members and former Ministers, it would be

helpful if the governing provisions could be amended to permit these persons to file appropriate material (including rulings from the Conflict of Interest Commissioner) with the Clerk where they may be publicly inspected.

I would also refer to the comments in my previous report about the fact that a former Member's (or Minister's) pay terminates sooner than the termination of his or her obligations under the conflict of interest provisions, which may present a hardship to persons leaving public life.

(e) Revision to forms

Last year, I indicated that it would be desirable to review the forms which Members and Ministers use for their annual statements. Unfortunately, I have not had an opportunity to complete this work, but will try to do so in the next year.

(f) Meeting of the Canadian Conflict of Interest Network

In September 2003, I attended the annual meeting of the Canadian Conflict of Interest Network ("CCOIN") in Yellowknife. CCOIN brings together all of the federal, provincial and territorial conflict of interest commissioners. The annual meeting provides an excellent opportunity to meet the other commissioners, and to learn how other jurisdictions are dealing with common issues.

C. 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, Ministers, Deputy Heads, cabinet and caucus employees—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.

D. CONTACT INFORMATION

I can be contacted as follows:

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All of which is respectfully submitted this 25rd day of June 2004 by:

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Conflict of Interest Commissioner