

**YUKON TERRITORY
CONFLICT OF INTEREST COMMISSION**

**ANNUAL REPORT
July 1998 – June 1999**

**The Hon. E.N. (Ted) Hughes, Q.C.
Commissioner
June 25, 1999**

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This is my third annual report to the Yukon Legislative Assembly. Its date coincides very closely with the completion date of my initial three-year term as Commissioner under the *Conflict of Interest (Members and Ministers) Act* which occurred on May 1, 1999. Four days previous to that date, Honourable Members appointed me to a second term of office and I thank them for the unanimous vote of April 27, 1999. I enjoyed my first term and I will endeavour to carry out my renewed responsibilities with the same diligence, fairness and timeliness that I trust characterized that term.

Like the first two years, year three was a year of relatively uneventful occurrences. I made one trip to Whitehorse in the fall of 1998 to hold a number of interviews with Members requiring advice on matters that held the seeds of potential conflict. All matters were subsequently resolved to the satisfaction of the individual Members and to me. During the course of the year I delivered written opinions to several Members.

Those opinions were given pursuant to Section 17(1)(a) of the *Act*, which reads:

17(1) There shall be a Conflict of Interest Commission to be appointed by and be accountable to the Legislative Assembly, and the commission shall

(a) advise Members, Ministers, and former Ministers, at their request, about whether or not they are or would be in a conflict of interest;

Those opinions remain confidential pursuant to the requirements of Section 24(1)(a) of the *Act* unless:

the Member, Minister, or Government Leader consents in writing to the request or this advice being disclosed;

For the third year in a row I am able to report that no complaints of alleged violations of the *Act* were filed, with the result that no investigations on the issue of compliance or non-compliance with the requirements of the *Act* were necessary. This result is, I believe, attributable to the efforts that all Members are making to honour and respect the requirements of the statute.

I keep in relatively close touch with the Clerk of the Legislative Assembly, Patrick L. Michael, who has always been most cooperative and helpful to me. Mr. Michael knows generally of my whereabouts. Information of how to reach me can be obtained through his office. Members are aware that a message can be left at any time on my home telephone at (250)361-3151. I presently have a fax number which is (250)413-3153. If a Member requires advice on a situation that may come within the provisions of the *Conflict of Interest (Members and Ministers) Act*, he or she should not hesitate to make contact with me. The old adage "an ounce of prevention is worth a pound of cure" is worth remembering.

Reference to that adage leads me to the next subject I wish to raise for consideration of Members of the Legislative Assembly. At some point in time the Legislature will undoubtedly give consideration to whether the *Act* under which the Commission is established and operates is in fact meeting the needs of Yukoners. In the debate of

April 27 the Government Leader correctly opined that "we have to put our minds, in the fullness of time, to considering successors to Mr. Hughes". For consideration of Members of the House between now and when the anticipated events referred to in this paragraph occur, I intend now to communicate information on relevant subject matters for the contemplation of Honourable Members.

In many respects the Northwest Territories (NWT) has conflict of interest legislation that parallels that in the Yukon. I was a member of the first Conflict of Interest Commission established in the NWT. As in Yukon, for several years all ran very smoothly in NWT. Then in 1998 the Commission was thrust into an investigation that cost the taxpayers of that Territory approximately \$1.7 million. The aftermath of that experience included the establishment, in December of 1998, of a three-person panel to review and report with recommendations on the Conflict of Interest legislation pertaining to Members of the Legislative Assembly. I was privileged to be a member of that panel which reported in April 1999 with 38 recommendations. Concurrent with the delivery of this Annual Report I am filing with the Speaker of the Legislative Assembly of Yukon a copy of the panel's 41-page NWT report so that it will be readily available for reference by all Members of the Yukon Legislative Assembly. I have decided, however, to review at this time ten of the 38 recommendations. They contain "food for thought" particularly for future occasions as referred to in the preceding paragraph. I will do so under five headings.

1. The Office and Responsibilities of the Commission

In the NWT and Yukon, the annual financial disclosure statement which each Member is required to submit is filed with the Clerk of the Legislative Assembly. In other jurisdictions across the country the filing is with the Conflict of Interest Commissioner. As the Commissioner is the Officer of the Assembly from whom Members should be obtaining their advice on all conflict of interest matters, our NWT panel made three recommendations to achieve that result. The panel was conscious that the volume of work for the Commissioner does not warrant a full-time appointment and made a fourth recommendation about the combining of the position with another Legislature Office. Those four recommendations read as follows:

- (a) The Conflict of Interest Commissioner should carry the responsibility as the sole source of advice to the members of the Legislative Assembly regarding conflicts of interest.
- (b) The Members' annual disclosure statements should be filed with the Conflict of Interest Commissioner and it should be his or her responsibility to prepare the public disclosure statement pursuant to Section 78 of the *Act*.
- (c) Members of the Legislative Assembly should be required to meet with the Conflict of Interest Commissioner on an annual basis to review their disclosure forms.

- (d) The Assembly may consider combining the Conflict of Interest Commissioner position with another Legislature office.

2. Ethical Conduct of the Members of the Legislative Assembly

NWT, alone amongst the provinces and territories has long had a section in its *Legislative Assembly and Executive Council Act* (Section 67(a)) that provides that each Member shall:

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.

In my days as Conflict of Interest Commissioner in British Columbia, I was a vocal advocate for the inclusion of such a section in the British Columbia statute and that offending its provisions be subject to sanction and enforcement in the same way as is dealt with for other prohibitions presently in the *Members' Conflict of Interest Act* of British Columbia. A similar provision appears in the Federal Code of Conduct administered by the Federal Ethics Counselor. Our NWT panel noted that Section 67(a) recognizes that the obligations of Members to their constituents go beyond the requirement that they not profit financially from their office, and that Members have positive obligations for which they may be held accountable. The panel recommended:

- (a) Section 67(a) of the *Legislative Assembly and Executive Council Act* imposes a high standard of ethical conduct on all Members and should be retained.

3. Complaints of violations of the *Conflict of Interest (Members and Ministers) Act*

In the Yukon the investigation of a complaint that a Member or Minister is or was in conflict can only occur if the complaint is made to the Commissioner by another Member of the Legislature. Many jurisdictions across the country have moved to allow members of the public to bring forward a complaint for investigation. Our NWT panel recommended:

- (a) Members of the public should be subject to the same requirements for laying a complaint as Members of the Legislative Assembly. However, the Conflict of Interest Commissioner should have the discretion to meet with a member of the public to receive a complaint, and to accept a verbal complaint in circumstances where it is appropriate to do so.

4. Inclusion of Senior Officials in Conflict of Interest Legislation

In my 1997-98 Annual Report to the Yukon Legislative Assembly I suggested the Assembly consider bringing senior officials in the employ of government under the provisions of the existing Conflict of Interest legislation and requiring that those officials meet the standards imposed on Members under the *Conflict of Interest (Members and Ministers) Act*. Our NWT panel gave consideration to that same issue and made the following three recommendations:

- (a) Deputy Ministers and those functioning at an equivalent level should be subject to the same standards as Ministers. These requirements should be legislated and should include the filing of an annual financial statement, and an annual meeting with the Conflict of Interest Commissioner.
- (b) Deputy Ministers and those functioning at an equivalent level should be subject to post-employment restrictions with respect to lobbying activities and assuming employment with organizations which had significant dealings with their government department or agency. The period of restriction should be six (6) months.
- (c) The Conflict of Interest Commissioner should, after giving notice to the Deputy Minister or senior officer functioning at an equivalent level, report any concerns that have come to his or her attention involving a Deputy Minister or senior official functioning at an equivalent level to the Premier and the Minister responsible. The Premier and the Minister responsible should be required to report the steps taken to the Conflict of Interest Commissioner within 60 days. That information should then be included in the Conflict of Interest Commissioner's annual report.

5. "Whistle Blower" Legislation

The NWT panel considered the effect that conflict of interest issues can have on public servants. We said in our report

Neither responding to requests from the Conflict of Interest Commissioner, nor taking concerns to the Conflict of Interest Commissioner, should result in reprisals in the work place. However, public servants can be vulnerable to the actions of their superiors. Public servants should not be put in the

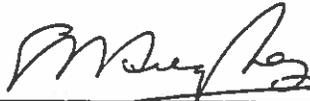
position where they must choose between protecting their employment and fulfilling their ethical obligations. To ensure that the latter is always the first priority, it would be appropriate to introduce "whistle blower" legislation to ensure that public servants are protected as a result of either bringing matters to the attention of the Conflict of Interest Commissioner or assisting the Conflict of Interest Commissioner in the course of his or her work.

We then recommended:

- (a) The Legislative Assembly and Executive Council Act should include provisions which state that no job action may be taken against any person as a result of that person either bringing matters to the attention of the conflict of Interest Commissioner or assisting the Conflict of Interest Commissioner in the course of his or her work.

At such future time as the current statute is under review, I suggest that the foregoing subject matters ought to be on the study list.

Respectfully submitted this 25th day of June 1999



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