



YUKON LEGISLATIVE ASSEMBLY
Conflict of Interest Commission
DAVID PHILLIP JONES, Q.C.



28 September 2022

Our File No. 3977

Mr. Stacey Hassard
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Yukon Legislative Assembly
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I am responding to your letter dated 21 September with respect to my jurisdiction to receive a complaint about whether a former Minister has breached section 10(4) of the *Conflict of Interest (Members and Ministers) Act*.

Your question

Specifically, you asked:

Section 17(d) of the Act allows you to investigate complaints made to you by current Members that another current Member or Minister is or was in conflict. This section explicitly does not reference former Ministers. Section 17(b) of the Act allows the Premier to request your advice about whether (*inter alia*) a former Minister is or would be in a conflict of interest.

So my question is as follows: does the Act allow me as a regular Member to ask you to investigate the conduct of a former Minister, or is that strictly the purview of the Premier?

Brief Answer

I do not have jurisdiction to receive a complaint from a current Member about whether a former Minister has breached the restrictions contained in section 10(4) of the Act because:

- Section 10(6) assigns this jurisdiction to the courts, and
- Section 17(d) only permits a current Member to make a complaint to me about other current Members or current Ministers.

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Analysis

Section 10 contains the following provisions restricting the activities of former Ministers:

10 Restrictions on former Ministers accepting contracts from Government

- (1) A former Minister must not knowingly, during the six months after the date they ceased to hold office,
 - (a) accept a contract or benefit that is awarded, approved or granted by the Cabinet, a Minister or an employee of a department of the Government of the Yukon; or
 - (b) make representations to the Government of the Yukon on their own behalf or on another person's behalf with respect to such a contract or benefit; or
 - (c) accept a contract or benefit from any person who received a contract or benefit from a department of which the former Minister was the Minister.
- ...
- (4) A former Minister shall not make representations to the Government of the Yukon in relation to a transaction or negotiation to which the Government is a party and in which the former Minister was previously involved as a Minister if the representations could result in the conferring of a benefit not of general application.
- (5) A person who was a Minister but who is no longer either a Minister or a Member must not use to further their own private interest, during the six months immediately after ceasing to be a Minister, information that they acquired because of their office as Minister which was not generally available to or accessible by the general public.
- (6) A person who contravenes subsection (1), (4) or (5) is guilty of an offence and liable, on summary conviction, to a fine of up to \$5,000.

Similar provisions assigning jurisdiction to the courts to deal with complaints about a former Minister, not to the Conflicts Commission, are found in the NWT, Alberta, British Columbia and Ontario legislation, among others.

Secondly, section 17 provides as follows:

17 Conflicts commission

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;
- (b) advise the Premier, at that official's request, about whether or not a Minister or former Minister is or would be in a conflict of interest;
- (c) advise the Premier, at that official's request, about appropriate rules of conduct for Ministers;
- (d) investigate complaints made to it by a Member that a Member or Minister is or was in a conflict;
- (e) investigate charges made to it by a Member that there were no reasonable grounds for the complaint made by a Member under paragraph (d);
- (f) report and make recommendations to the Legislative Assembly on investigations conducted by the commission under paragraphs (d) and (e);
- (g) perform any duties assigned to the commission by the *Public Service Act* and the *Cabinet and Caucus Employees Act*.

Paragraph 17(d) makes it clear that the Commission may only investigate complaints made by a current Member that another current Member or current Minister is or was in a conflict of interest. Paragraph 17(d) does not contemplate that a current Member may make a complaint about a former Member or a former Minister who is no longer a Member (as is the case in the situation you are inquiring about). This is consistent with the general role of the Commission to assist the Legislative Assembly in exercising its disciplinary powers with respect to current Members and current Ministers.

The rules in section 10 restricting the activities of a former Minister fall outside the Assembly's disciplinary powers about current Members and current Ministers. The

Assembly has no disciplinary powers with respect to such persons: the remedy for a breach of those rules lies with the court: section 10(6).

Section 17(a) does permit a former Minister to ask for the Commission's advice about whether they would be in a conflict of interest (section 11 provides that a breach of the restrictions in section 10 constitutes a conflict of interest). And section 13 provides that:

- 13(1) Sections 10 and 12 do not apply if the commission has, on the application of the former Minister, advised that although there is or would be a conflict of interest the conflict is or would be so remote or insignificant that it should not disqualify the former Minister from accepting the contract or benefit in question.
- (2) The commission's advice in response to an application under subsection (1) is conclusive for the purposes of this Act so long as the relevant facts on which the advice is based are accurate and complete.

Section 17(b) does provide that the Premier may request the Commission's advice about whether or not a Minister or former Minister is or would be in a conflict of interest. That prerogative, however, lies with the Premier; section 17(b) does not provide that another Member may make a request for such advice. And, as noted above, section 17(d) does not permit a current Member to make a complaint asking the Commission to investigate whether a former Minister has breached the Act.

Conclusion

An examination of the provisions of the Act make it clear that the Conflicts Commission does not have jurisdiction to receive a complaint about a former Minister who is not still a Member of the Legislative Assembly.

Yours sincerely,



David Phillip Jones, K.C.
Yukon Conflict of Interest Commissioner