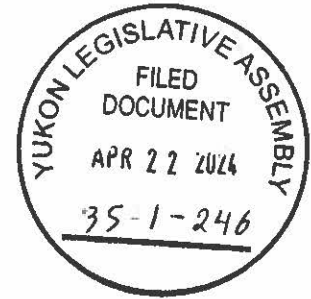


April 22, 2024

The Honourable Ranj Pillai
Premier of the Yukon
via email: Ranj.Pillai@yukon.ca



Dear Premier Pillai:

RE: Apparent Conflict of Interest for the Attorney General of the Yukon

I am writing you this letter to call your attention to the appearance of a conflict of interest.

The Hon. Tracy-Anne McPhee, as former head of the Department of Education, is accused of breaching the duties imposed on her as minister with respect to disabled students, including:

- failure to issue guidelines and standards for the implementation of special education;
- complete lack of oversight, e.g., allowing the practice of holds, restraints, and seclusion;
- failure to prevent, reduce, or control the risk of harm to students, e.g., sexualized abuse;
- administering policy in a manner that violates the dignity and liberty interests of students.

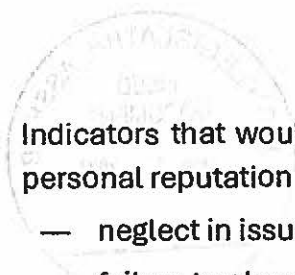
The guardians of many students brought these matters before the Supreme Court of Yukon. As Attorney General, Minister McPhee is now charged with superintending the litigation.

In the Yukon, there is a clear legislative prohibition against apparent conflicts of interest, and regulations instruct that whenever a matter comes before a department for which a minister is responsible that would involve a personal interest that may be construed as influencing the impartiality of their judgment — the minister must bring the matter forward to Cabinet and request that a colleague be appointed to act for the purpose of dealing with the matter.

As you know, personal interests are not confined to financial or business considerations and may be social or political in nature, for example, **a personal interest may be designed to protect or advance the retention of constitutional power by the incumbent government.** These “cannot be said to serve the general public” and “should bear close scrutiny when a public office holder is exercising his or her official duties, powers or functions”, as reported by the Conflict of Interest and Ethics Commissioner for the Parliament of Canada.

Your administration appears to be in breach of the law, since you ought to know that:

- there is the reasonable appearance of an opportunity for Minister McPhee to further her own social or political interests while superintending any lawsuit which would call into question the lawfulness her conduct as minister of another department; and
- Minister McPhee was and is obligated to ensure that her affairs are conducted and that no conflict arises or appears to arise between her private interests and public duties.



Indicators that would suggest the Attorney General might be illegitimately prioritizing her personal reputation or partisan political interests over adherence to the rule of law include:

- neglect in issuing legal hold notices and of the duty to preserve needed evidence;
- failure to observe the ‘respectable legal argument’ threshold when contesting relief;
- oppressive breach of open access provisions under access to information legislation such that individual litigants are forced to expend time and resources in discovery to obtain government records they are ostensibly entitled to as members of the public;
- refusal to identify herself or her deputy minister as custodians of relevant documents;
- abject under-resourcing and improper delegation of documentary disclosure duties.

Ministers have an overarching duty to comply with the law. When a minister breaches their legal obligations, they should be held to account, yet your party demonstrated its contempt for the will of the House and its capacity to ignore convention after a majority of the Assembly moved for the resignation of Minister McPhee from Cabinet in October 2021.

That behaviour seems to be part of a larger pattern of eschewing, rather than upholding, the rule of law — despite the legislated role of the Attorney General. In fact, the *Department of Justice Act* entrusts Minister McPhee with the powers and charges her with the duties that belong, by law or by usage, to the Attorney General and Solicitor General of England.

In England, the key to retaining public confidence in the respectability of those offices is known to be the requirement which places the duty to uphold the rule of law above all consideration of party politics; as such, England’s Law Officers are to refrain from making statements that could damage public perception of their impartiality. Unfortunately, the Yukon’s Legal Services Branch appears to be struggling to reconcile such a concept with their duty of loyalty...

When confronted with the apparent conflict of interest, Minister McPhee’s staff insisted that the statutory duty of the Attorney General to superintend all litigation against the Yukon makes the concept of political interference “unintelligible” in the context of civil litigation.


Their perceived reliance on legal uncertainty and/or opaque internal procedures to abdicate ministerial responsibility is unacceptable because the *Conflict of Interest Act* stipulates that: (i) the rules of conduct for ministers cannot have the effect of permitting conduct that results in a conflict of interest; and (ii) a conflict is the declared result when a minister makes a decision in the execution of office at the same time as she ought to know that in the function there is the reasonable appearance of an opportunity for her to further her own private interest.

The Hon. David Phillip Jones, K.C., as Conflict of Interest Commissioner for the Yukon, reports that ministers occasionally choose to publicly release his advice, or they may waive confidentiality by making representations that they are acting in accordance with his advice.

If I am mistaken about the conflict of interest, and Minister McPhee is not required to recuse herself from acting as Attorney General for the purpose of superintending all civil litigation concerned with the legality of her conduct as former Minister of Education — then I urge you to direct her to waive confidentiality. The public would surely benefit from the legal certainty.

The impartiality of the Attorney General in performing her rule of law functions is called into question when the concept is afforded such little respect under her tutelage. Should you refuse to address this concern, I fear your Cabinet will be renowned as one prepared to exert the influence of public office merely to retain power at any cost. For the sake of the public, including the disabled children whose rights deserve vindication, I hope to hear from you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Elise McCormick', with a large, stylized flourish at the end.

Elise McCormick

eliseccortes@gmail.com

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