

**YUKON
CONFLICT OF INTEREST COMMISSION**

ANNUAL REPORT

**TO THE LEGISLATIVE ASSEMBLY
FOR THE PERIOD FROM 1 APRIL 2020 TO 31 MARCH 2021**

**David Phillip Jones, Q.C.
Commissioner
18 June 2021**

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**to the Legislative Assembly
for the period from 1 April 2020 to 31 March 2021**

This is my eighteenth Annual Report as a member of the Conflict of Interest Commission, and covers the period from 1 April 2020 to 31 March 2021.

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 and review copies of the disclosure statements as filed, and the disclosure statements are available in the 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' and Ministers' disclosure statements to be provided to the Conflicts Commissioner; prohibits a Member or Minister from being involved in any matter in which he or she 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); permits those covered by the legislative scheme to seek advice (which is usually confidential) from the Conflicts Commissioner about whether they are or would be in conflict of interest; prescribes what is to occur if a Member or Minister is in conflict of interest; provides for complaints by a Member against another Member or Minister, and authorizes the Conflicts Commissioner to investigate such complaints to determine whether a conflict of interest has occurred and if so thereafter to make recommendations to the Legislative Assembly about what action (if any) is to be taken in those circumstances; and, whenever a formal complaint has been made, requires the Conflicts Commissioner to determine whether there was a reasonable basis for the Member to have made such a complaint, and if not authorizes the Legislative Assembly to take certain action against the Member making such a complaint.

- 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*, which was revised in November 2011, 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 which took effect on October 19, 1994.

The *Act* contemplates that these rules may be superseded and new rules filed with the Conflict of Interest Commission.

- 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 rules are:

- 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 2020 TO 31 MARCH 2021

(1) Advice during the year

Throughout the year under review, various Members and Ministers 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*, the Conflict of Interest Commission must keep confidential both the fact that anyone has made a request for advice, as well as the resulting advice.

Section 24 provides only two exceptions to the Commission's obligation of confidentiality:

- (a) if the Member or Minister consents in writing to the disclosure of the advice or the fact that the Member or Minister asked for advice; and
- (b) if the Member or Minister represents that he or she has acted in accordance with this advice, and any other Member asks the Commission to disclose the request and the advice given.

The right to confidentiality belongs to the Member or Minister seeking the advice, and can be waived by the Member or Minister explicitly or by representing that he or she has acted in accordance with my advice. Apart from these two exceptions, I am not able to breach the Member or Minister's statutory right to confidentiality.

Notwithstanding this statutory confidentiality provision, I have from time to time received inquiries from other Members, the press and others about whether I have provided any advice to a certain Member and if so what was the content of that advice. Given the wording of section 24, I am bound not to reply to these inquiries, although I have tried to explain the confidentiality provision to those who have contacted me.

In some previous cases, a Member or Minister has made the decision to publicly release my advice.

(2) Requests by the Premier for Advice

In addition to permitting Members to request *advice* about whether his or her own situation would or would not constitute a conflict of interest, section 17(b) of the *Act* permits the Premier to request the Conflicts Commission to provide advice about whether a Minister or former Minister is or would be in a conflict of interest. This advice is normally private, but on a number of previous occasions a Premier has publicly stated that he has requested such advice and has undertaken to make the advice public.

(3) Meeting with MLAs and Ministers

As has been my practice after each general election, I travelled to Whitehorse during the first week of December 2016 to meet with all of the newly-elected MLAs and newly-appointed Ministers to orient them to the conflict of interest legislation. These personal meetings are particularly helpful in letting Members and Ministers know their obligations under the legislation, and letting them know me so they are comfortable in contacting me throughout the year if they ever have any questions or concerns.

In most years, I come to Whitehorse in April to be available to meet with Members and Ministers prior to their filing their Annual Disclosure Statements. I did so in April 2018 and 2019. However, due to the COVID-19 pandemic, I was not able to travel to Yukon in either April 2020 or 2021, but remained available by telephone and email to the Members and Ministers for consultation prior to their filing their Annual Disclosure Statements. Because the election was held on April 12, 2021, I made an administrative decision to defer the usual filing date for disclosure statements to May 31, 2021. All of the MLAs and Cabinet members filed their disclosure statements by that date at the Clerk's Office, which in turn provided copies to me.

In addition, I have had consultations throughout the year with Members and Ministers in response to their inquiries and questions, and have provided advice as required.

(4) Filing of Annual Disclosure Statements

All of the requisite disclosure statements were filed on time with the Clerk, copies were provided by the Clerk's office to me, and I reviewed each of them.

(5) Complaints by a Member

Section 17(b) of the *Act* permits a Member (not a member of the public) to make a *complaint* to the Commission that another Member or Minister is or was in a conflict of interest.

The Commission is required to investigate such a complaint, and has the powers and privileges of a board of inquiry under the *Public Inquiries Act* in conducting such an investigation (including the obligation to inform the Member or Minister of the particulars of the complaint, and to give the affected person reasonable opportunity to make representations in response thereto).

Under section 23, the Commission must report its finding to the Legislative Assembly about whether the Member or Minister is or was in conflict of interest with respect to the matter raised in the complaint. If the Commission finds that there is or was a conflict of interest, the Commission must provide its recommendation to the Legislative Assembly about what action the latter should take (section 23). The actions which the Legislative Assembly may take are: (a) stipulating how the Member or Minister is to remove the conflict; and (b) suspending the Member or Minister from sitting in the Assembly or any committee thereof.

At the end of its investigation into a complaint, the Commission must also make a determination about whether the complaining Member had reasonable grounds for making the complaint (section 23(6)), and report that determination to the Legislative Assembly. In an appropriate case, the Legislative Assembly may find the complaining Member in contempt of the Assembly and suspend the complaining Member from sitting in the Assembly or any committee thereof.

As will be appreciated, the making of a formal complaint is a serious matter, which puts into play a formal and potentially costly investigation process, and which may result in serious and public consequences to either the Member or Minister complained against or the Member making the complaint. Accordingly, Members and Ministers are well advised to take considerable care to arrange their affairs so as to avoid a conflict of interest ("an ounce of prevention is worth a ton of cure"); and Members will think carefully before making a formal complaint against another Member or Minister.

There have been no complaints or investigations during the period covered by this report.

(6) Deputy Heads, Cabinet Staff and Caucus Staff

Part of my duties involve Deputy Heads of Departments, Cabinet Staff, and Caucus Staff. Throughout the year, I received various inquiries from persons in these groups, and provided advice to them.

(7) Meeting of the Canadian Conflict of Interest Network

The September 2020 annual meeting of the Canadian Conflict of Interest Network (“CCOIN”) was scheduled to take place in Yellowknife hosted by the Integrity Commissioner for the NWT (an office which I also hold). However, the COVID-19 pandemic meant the in-person meeting had to be postponed. Instead, the Commissioners held a half-day virtual meeting in September 2020, and another one in March 2021. Unfortunately, the September 2021 in-person meeting has also been postponed for another year, and the Commissioners will continue to hold one or two shorter virtual meetings throughout the coming year instead.

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, to learn how other jurisdictions are dealing with common and emerging issues, and builds relationships that are regularly used to help individual commissioners address issues which arise in their respective jurisdictions. At the conference, I made a presentation about the operation of solicitor-client and other legal privilege in the context of the work under the Commissioners’ varying legal regimes. In short, CCOIN is a very important organization for sharing knowledge and mutual support among the Canadian conflict of interest commissioners.

C. OBSERVATIONS ABOUT THE LEGISLATION

As I have mentioned in previous reports, it is important to remember that not all concerns about the appropriateness of a Member or Minister’s actions constitute a conflict of interest (either as defined in the Yukon legislation, or more generally at law or in parliamentary practice).

In previous reports, I have raised the question about whether amendments to the legislation might be considered. It was originally enacted in 1995 and amended in 1999 to cover Deputy Heads and Cabinet and Caucus Employees. Concepts about what constitutes a conflict of interest do evolve over time.

As indicated in previous reports, some possible areas which might be clarified include:

- A definition of what a “private interest” does not include—perhaps along the lines of the definition in Nunavut’s *Integrity Act*, which excludes anything of general

application to the public, or that affects a person as one of a broad class of persons, or concerns the remuneration or benefits of a Member, officer or employee of the Legislative Assembly. It might also be helpful to provide some discretion to the Conflict of Interest Commissioner to determine that a particular "private interest" is insubstantial and should not create a conflict of interest.

- How far public disclosure has to be made by a shareholder in a private corporation with respect to the ownership and affairs of its subsidiaries or affiliates.
- Whether there should be an obligation to meet at least annually with the Commissioner.
- Whether there should be special provision in the legislation for a Special Commissioner for cases where the Commissioner cannot act, and for an Acting Commissioner, or for appointing an additional member to the Commission in such a circumstance.
- Whether there should be the ability for the Commissioner to refuse to investigate a complaint which is frivolous or vexatious.
- What should be the policy for archiving or destroying the Commission's records.
- Whether there should be provision for paying all or some of the costs incurred by Members or Ministers in complying with the Act (such as establishing a blind trust).
- Whether there should be provision for paying all or some of the costs incurred by Members or Ministers as a result of complaints.
- Whether the legislation should specifically provide some discretion to the Commissioner to extend the deadline for filing a disclosure statement, with or without conditions, where the Commissioner is satisfied that there is good reason for the extension. An example would be where the person required to file the statement might be incapacitated at the deadline, or unavoidably out of Yukon due to a family emergency.
- Whether there should be a statutory requirement for periodic reviews of the legislation.

In my respectful opinion, these are issues which the Legislative Assembly should consider as soon as convenient to ensure that the concepts in the legislation correspond to the current expectations of both the Members and the public.

Having said this, in my observation the present system continues to work well, largely because Members, Ministers, and Deputy Heads are very much aware of their obligation to avoid actual and reasonably perceived conflicts of interest, and regularly seek advice in advance about whether they might be in conflict of interest and how that can be avoided.

D. LOBBYISTS REGISTRATION ACT

The *Lobbyists Registration Act*, SY 2018, c. 13 was assented to on November 22, 2018, and came into effect on 15 October 2020. The *LRA* assigns various functions to the Conflict of Interest Commissioner. Implementation appears to have been relatively seamless. Helen Fitzsimmons has been a key person in overseeing this work.

E. ACKNOWLEDGMENTS

I want to recognize the co-operation of Members, Ministers, Deputy Heads, cabinet and caucus employees in complying with the conflict of interest legislation.

I would again like to publicly thank the staff in the Office of the Clerk of the Legislative Assembly for their support in helping me discharge the duties of this office. In particular, I appreciate the very able, willing, effective and cheerful assistance which Helen Fitzsimmons and Brenda McCain-Armour provide to me.

Finally, I would like to thank my assistant, Linda Volz, in my office in Edmonton for her support to me in performing this function.

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.

F. 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 18th day of June 2021 by:

A handwritten signature in blue ink, appearing to read 'D. Jones', is written over a light blue horizontal line. The signature is fluid and cursive.

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