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MEMORANDUM

TO: Jackson Lafferty, Member for Monfwi

FROM: Alyssa Holland, Deputy Law Clerk

DATE: February 12, 2020

RE: Legal authority to terminate the appointment of the Aurora College president

You have asked me to provide a legal opinion regarding the legal authority to terminate the appointment of the president of Aurora College. This memo explains who holds this legal authority, how it is to be exercised, and its relationship with other appointment powers under the *Public Service Act*.

A detailed analysis of these issues is set out below. For convenience, I have also provided brief answers to the following questions:

1. **Who has the authority to terminate the appointment of the President of Aurora College?** Only the Minister may do so.
2. **Does an administrator appointed under the *Aurora College Act* have a role in appointing, or in terminating the appointment of, the president of Aurora College?** No.
3. **Can the president of Aurora College hold other appointments in addition to being president?** Yes.
4. **Who has the authority to terminate the appointment of a deputy minister under the *Public Service Act*?** This authority effectively lies with the Premier.
5. **Does the termination of one appointment also terminate other appointments an individual may hold?** Where the appointments are made under the *Public Service Act* and under the *Aurora College Act*, no.

1. Who has the authority to terminate the appointment of the President of Aurora College?

Appointment of the President of Aurora College is governed by section 19 of the *Aurora College Act*, which provides as follows:

19. (1) The Minister shall, in consultation with the Board, appoint a president of Aurora College.

(2) The president is an employee of the public service.

(3) For greater certainty, subsection (1) operates notwithstanding the *Public Service Act*.

The *Aurora College Act* is silent on the power to terminate the College's president. However, the *Interpretation Act* provides, at section 18, that the power to appoint a public officer also includes the power to:

- fix the term of office of the public officer;
- terminate or remove the appointment of the public officer or remove or suspend the public officer;
- reappoint or reinstate the public officer;
- fix, vary or terminate the public officer's remuneration and expenses;
- appoint a deputy of the public officer to perform and exercise some or all of the duties and powers of the public officer, as specified in the instrument of appointment; and
- appoint a person to act temporarily in the stead of the public officer, whether or not the office is vacant.

The *Interpretation Act* also states, at section 17, that "A public officer appointed under the authority of an enactment holds office during pleasure only, unless a contrary intention is expressed in the enactment or the instrument of appointment." The *Interpretation Act* also applies "to every enactment, whenever enacted, unless a contrary intention appears" (section 2). No such contrary intention appears in the *Aurora College Act*. This means that the rules in the *Interpretation Act* regarding appointment and termination power apply to the appointment of the president of Aurora College.

Read together, the *Aurora College Act* and the *Interpretation Act* provide that the authority to terminate the appointment of the president of Aurora College lies with the Minister. The Minister also has a suite of other powers with respect to the Aurora College president, and these powers flow directly from the appointment power given to the Minister in section 19 of the *Aurora College Act*.

This power to appoint (and, consequently, to terminate) "operates notwithstanding the *Public Service Act*" (section 19(3) of the *Aurora College Act*). This is despite the fact that the president is deemed to be a member of the public service by virtue of section 19(2). The effect of this clause is to oust any aspect of the *Public Service Act* that would otherwise govern the appointment (and, consequently, termination) of the Aurora College president. Put simply, section 19(3) of the *Aurora College Act* provides that the *Public Service Act* and the various processes it sets out for making appointments, has no role in the appointment and termination of the President.

The *Interpretation Act* makes it clear that the power to "appoint" is a substantive power. In addition to the many powers tied to the appointment power in section 18 (including the power to terminate), an appointment made under statutory authority has the effect of giving real power to the individual appointed. The appointment has a beginning, and continues only during the Minister's pleasure: subsections 17(1) and (2), *Interpretation Act*. While the appointment is in effect, the appointee - in this case, the President - has specific and substantive powers, as set out

in section 20 of the *Aurora College Act*. These powers include, among others, an obligation to supervise, administer and direct the operation of Aurora College.

Given the interpretation mandated by the *Interpretation Act*, and the provisions of the *Aurora College Act* outlined above (including the explicit ouster of the *Public Service Act*), there is no need or role for any other decision-maker to become involved before a president of Aurora College to assume his or her duties. Nor is there any need or role for any other decision-maker's involvement in the termination of a president's appointment.

2. Does an administrator appointed under the *Aurora College Act* have a role in appointing, or in terminating the appointment of, the president of Aurora College?

Section 31 of the *Aurora College Act* provides that the Minister may appoint an administrator for Aurora College, thereby revoking the appointments of all members of the Board. An administrator was appointed by the Minister on June 5, 2017,¹ and holds office until a new Board is appointed: section 31(4).

Where an administrator is in place, the Minister cannot consult with the Board before appointing a president, as required by section 19 (1). Although section 33 provides that, in these circumstances, any reference to the Board should be read as a reference to the administrator, I suggest this does not impose a requirement for the Minister to consult with the administrator before appointing a president. This is because the administrator is required, by section 32, to perform the duties of the Board "in accordance with the direction of the Minister". Consulting with the administrator would amount to the Minister consulting with him or herself, and that is unlikely to be what the Legislative Assembly intended in enacting this legislation.

3. Can the president of Aurora College hold other appointments in addition to being president?

Yes. There is nothing in the *Aurora College Act* or in the *Public Service Act* that would prevent one individual from holding appointments under both statutes.

The analysis above applies only to an individual's statutory appointment as president of Aurora College. It does not apply to any additional appointments that the same individual may receive, which may be governed by different legislative schemes.

I understand that your inquiry specifically concerns the appointment and termination of Dr. Thomas Weegar as Aurora College president. I understand he received two appointments:

- He was appointed president of Aurora College by the Minister of Education by virtue of appointment instrument A-092-2019 (enclosed) under the authority of the *Aurora College Act*; and
- He was appointed Associate Deputy Minister of Postsecondary Education Renewal by the Premier. This appointment is not reflected in an appointment instrument, which I understand is standard practice for Deputy Minister appointments made under section 16.1 of the *Public Service Act*.

¹ See http://www.auroracollege.nt.ca/_live/pages/wpPages/AboutBoardOfGoverners.aspx.

4. Who has the authority to terminate the appointment of a Deputy Minister under the *Public Service Act*?

The *Public Service Act* gives exclusive authority to the Commissioner in Executive Council to appoint a Deputy Minister, on the recommendation of the Premier: section 16.1. Because this section effectively vests the power to appoint Deputy Ministers in the Premier, the Premier also effectively has the corresponding power to terminate any appointment made under this section by virtue of section 18 of the *Interpretation Act*.

Note that the term "appoint" is used in section 16.1, as it is in the *Interpretation Act* and in the *Aurora College Act*. This suggests that the power to appoint a Deputy Minister, which effectively lies with the Premier, is substantively the same as the Minister's power to appoint the Aurora College president under the *Aurora College Act*. Each has the power to both grant and revoke the public offices prescribed by these two statutes.

5. Does the termination of one appointment also terminate other appointments an individual may hold?

The legislative schemes governing these two appointments are distinct. The Minister's power to appoint, or to revoke the appointment of, the Aurora College president has no impact on the Premier's effective authority to appoint, or to revoke the appointment of, a Deputy Minister, and *vice versa*. This is true even when one individual receives appointments under each of these schemes.

To put it simply, only the Minister may terminate the appointment of the Aurora College president. Should the Minister do so, this termination would not affect any other appointments the president may hold. The same is true of a Deputy Minister's appointment. If the Premier terminates a Deputy Minister's appointment, this termination would not affect any other appointments that individual may hold.



Northwest
Territories Canada

APPOINTMENTS REGISTER

Registered in the Appointments Register
March 20, 2019 under registration

number A - 092-2019

Filed by [Signature]

AURORA COLLEGE ACT

The Minister, under subsection 19(1) of the *Aurora College Act* and every enabling power, appoints

THOMAS WEEGAR
of Yellowknife

as the president of Aurora College, to hold office during pleasure, commencing March 4, 2019.

Dated March 18, 2019.

[Signature]
Caroline Cochrane
Minister

