



Northwest
Territories

Ted Hughes Q.C.
Office of the Conflict of Interest Commissioner

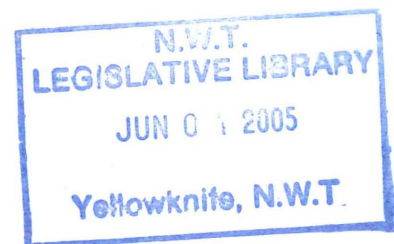
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Annual Report
of
The Conflict of Interest Commissioner
to the
Legislative Assembly of the Northwest Territories

April 13, 2005



Ted Hughes, O.C. Q.C.
Commissioner

Laing Building 1st Floor, P.O. Box 1860, Yellowknife, Northwest Territories, Canada X1A 2P4
Telephone: (867) 920-3126 • Fax: (867) 873-0637 • Toll Free: 1-800-340-2689

#619-50 Songhees Road, Victoria, B.C. V9A 7J4
Telephone: (250) 361-3151 • Fax: (250) 384-1291 • Email: thqc@shaw.ca



April 13, 2005

The Honourable Paul Delorey
Speaker
The Legislative Assembly of the Northwest Territories
PO Box 1320
Yellowknife NT X1A 2L9

Dear Speaker Delorey:

I have the honour to present to you, for transmittal to all Members of the Legislative Assembly, my third annual report as Conflict of Interest Commissioner. The report addresses the activities of my office during 2004. For the benefit of not only all Honourable Members but also members of the general public, I will review, as I have done previously, the mandated responsibilities of my office before turning my attention specifically to the activities of 2004.

The requirement for this report is mandated by Section 99 of the *Legislative Assembly and Executive Council Act*. Part 3 of that *Act* is devoted exclusively to “Conflict of Interest” and occupies sections 73 to 111 of the *Act*.

Section 99 requires that I address five subjects in my report. The first four deal with procedural matters, principally delinquencies or transgressions. I will report total compliance by all Members with the first three of them and then discuss the fourth requirement before I move on to the fifth area which will form the substance of this report, addressing as I am required to do by way of a general summary, my “activities” as Commissioner of Conflict of Interest during 2004.

My report on the first three requirements:

1. There were no late filings or failures to file disclosure statements.

2. There were no authorizations by me to any Member to accept a contract that otherwise would have been prohibited by the *Act*.
3. No extensions of time were requested or required by any Member.

The fourth requirement of me is found in Section 99(1)(d) of the *Act*, which provides that I am to make:

a statement identifying a member who is the subject of a complaint dismissed by the Conflict of Interest Commissioner under paragraph 102(1)(a), summarizing the grounds of the complaint and providing the reasons for its dismissal.

Section 102(1)(a) of the *Act* (referred to in Section 99(1)(d) immediately above), reads:

102(1) After conducting an investigation into the complaint, the Conflict of Interest Commissioner shall submit to the Speaker, the member complained of and the complainant, a report, with reasons, advising that the Conflict of Interest Commissioner

- (a) is dismissing the complaint, where the Conflict of Interest Commissioner has determined that
 - (i) the complaint is frivolous or vexatious or was not made in good faith,
 - (ii) there are insufficient grounds to warrant an inquiry,
 - (iii) the complainant does not disclose a contravention of this Part,
 - (iv) a contravention of this Part was minor or was committed through inadvertence or by reason of an error in judgment made in good faith, or
 - (v) the member took all reasonable measures to prevent a contravention of this Part;

One complaint only was placed before me in 2004. On August 27, the Board of Management, through you, brought to me a complaint with respect to the “ordinary residence of Roger Allen, Member for Inuvik Twin Lakes”. (It should be noted here and now that Mr. Allen is not now a member of the Legislative Assembly.)

The formal complaint stated that the Management Board had reasonable grounds to believe that

1. Mr. Allen has not arranged his private affairs in such a manner as to maintain public confidence and trust in the integrity of the Member, pursuant to section 75(a) of the *Legislative Assembly and Executive Council Act*;
2. Mr. Allen has accepted remuneration and/or benefits, the acceptance of which might erode public confidence in the integrity of the Member and which should be capable of bearing the closest public scrutiny, pursuant to section 75(b) of the *Legislative Assembly and Executive Council Act*.

The formal complaint then particularized the basis on which the Board believed reasonable grounds existed to show a violation of Section 75(a) and 75(b), of the *Act*. Those subsections of Section 75 of the *Act* read as follows:

75. Each member shall

- (a) 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;
- (b) refrain from accepting any remuneration, gift or benefit the acceptance of which might erode public confidence and trust in the integrity, objectivity or impartiality of the member, and in all other respects act in a manner that will bear the closest public scrutiny.

The Act required that I give Mr. Allen notice of the complaint before conducting an investigation of it. I commenced my investigation in September and when I was well into the assignment Mr. Allen, on October 12, resigned his seat in the Legislative Assembly. The choice that was then before me was to either dismiss the complaint on the basis of insufficient grounds to warrant an inquiry or direct that a formal inquiry take place before a Sole Adjudicator recommended by the Board of Management from a list of names approved by the Legislative Assembly. I opted for the former of the two alternatives and stated my reasons, on October 29, as follows:

An Inquiry before a Sole Adjudicator carried out pursuant to Sections 103 – 107 of the Act would be a long expensive process. If the Sole Adjudicator were to find the former member to be guilty of contravening a section of the Act, the sole punishment that could be imposed would be a fine not exceeding \$10,000. Other punishment options listed in Section 106(1)(b) of the *Act* have either disappeared as a result of the resignation or are otherwise inapplicable. There is not assurance that such an Inquiry could be brought to a conclusion in a reasonable time frame. For instance whether service of a subpoena, within the jurisdiction, on those required to attend, could be achieved is an unknown. When all of these factors are taken into account the grounds to warrant an Inquiry and to put the treasury and the other resources of the Territory through such a process are, in my opinion, insufficient. For that reason and acting under Section 102(1)(a)(ii) of the *Act* I dismiss the complaint and bring this proceeding under the provisions of the *Legislative Assembly and Executive Council Act* to conclusion.

That concludes my discussion of the fourth requirement with respect to what must be included in this report. I will return later to speak in complementary terms both of the cooperation I have received during the year from all Honourable Members and also of my one hundred percent support for the inclusion of Section 75 in the *Act* under which this complaint was brought.

This brings me to a general summary of my “activities” over the preceding year. The Commissioner performs three principal functions. I will comment on each of them:

1. To provide to Members written advice and recommendations on any matter respecting the obligations of a Member under the Act. I consider this to be the most important of all of the statutory responsibilities of the Commissioner.

The Act defines when a Member has a conflict of interest. It requires each Member to prevent a conflict of interest arising and to perform his or her duties of office and arrange his or her affairs in such a manner as to maintain public confidence and trust in the integrity, objectivity and impartiality of the Member. It also prohibits the acceptance of any remuneration, gift or benefit, the acceptance of which might

erode public confidence and trust in the integrity, objectivity and impartiality of the Member. There are also prohibitions against the use by a Member of inside information and using the Member's office to seek to influence a decision made by another person to further the Member's private interests.

These onerous but very necessary responsibilities of the office of M.L.A. The Conflict of Interest Commissioner is available at all times to offer advice to Members in order to insure compliance by Members with these requirements and to prevent conduct and actions that would be in violation of them. Over the past year many Members have availed themselves of the services of my office in seeking advice in order to ensure their compliance with the law.

I encourage all Members to be in touch with me if they have any concerns. The Commissioner is available to assist in preventing violations through the offering of timely advice to Members. The advice given to a Member by the Commissioner is confidential but may be disclosed by the Member. The *Act* provides that where a Member has received the advice and recommendations of the Commissioner, no proceedings can be taken against the Member in respect of his or her obligations on which he or she has sought that advice if the Commissioner has been given all the material facts and the Member has complied with the advice and recommendations of the Commissioner.

2. To receive the private disclosure statements of each Member, disclosing sources and amount of income and the assets, liabilities and financial interests of the Member, his or her spouse and dependent children.

Receipt of the Member's annual private disclosure statement is followed by a confidential meeting between the Member and the Commissioner to review the statement and receive any advice the Commissioner has to offer with respect to the Member's obligations under the *Act*. This followed by the preparation, by the Commissioner, of a public disclosure statement with respect to each Member and the subsequent filing of that public disclosure statement where it can be inspected

by members of the public. These public records are available in the Legislative Library.

In 2004, all Members filed their disclosure statements with me within the required time frame and I held a confidential meeting with each of the 19 Members. I received the full cooperation of all Members in meeting the requirements of disclosure.

It should be noted that if changes occur during the year with respect to sources of income, acquisition or disposition of assets, financial interests or liabilities, those changes must be recorded with the Commissioner within 90 days of the occurrence. Also, specific reporting provisions pertain to private companies in which the Member, his or her spouse or dependent children have an ownership interest.

3. To receive and act upon written complaints by a Member of the Legislature or a member of the public setting out reasonable grounds on which the complainer believes that a Member of the Assembly has contravened any provision of the *Act*.

The 2004 complaint that I have already addressed in this report is an example of acting on the third of the three principal functions of the Commissioner. That complaint is the one and only one that I have received in my three year in office. In my judgment, that record speaks well of the commitment of Members to carry out their responsibilities of office in an exemplary manner. I commend all honourable members for their performance to that standard and I thank each one of them for the cooperation and support that they have given to this office.

On numerous occasions, I have taken the opportunity to sing the virtues of subsections (a) and (b) of Section 75. In my last annual report, I noted that few Legislatures in the country have had the foresight and conviction to legislate in a manner that mandates performance to the standards of those two subsections and I noted that, in my judgment, they represent what Canadians expect of their elected

representatives. The usefulness of them to the Management Board in advancing the complaint that I have reviewed in this report is certainly clear.

Miscellaneous Matters:

- (1) Accessibility – I encourage all members to be in touch with me through my Yellowknife office at any time on any issue of concern to them. During 2004, I was in Yellowknife and personally available to Members on six occasions. During 2005, I will again be present on at least six occasions and at any other time that a need exists.

Members will be aware that I also perform duties to assist members of the public service of the Northwest Territories in my capacity as Ethics Counsellor, pursuant to the provisions of the Code of Conduct respecting Conflict of Interest and Oath of Office and Secrecy for Employees of the Government of the Northwest Territories. In that capacity I provide advice, when requested, to members of the public service and I also attend to disclosure requirements applicable to those holding positions at the level of Deputy Minister or its equivalent.

- (2) National Participation – Commissioners across the country belong to the Canadian Conflict of Interest Network. An annual meeting is held, where common problems and solutions are discussed to the benefit of all participants. Besides representatives from the Provinces and Territories there is representation from the Ethics Counsellor in Ottawa. It was an honour to have hosted my colleagues in Yellowknife in 2003. Last year we met in Halifax and in 2005 we will gather in Edmonton during Alberta's Centennial year.

Respectfully submitted this 13th day of April 2004.



Ted Hughes O.C. Q.C. Commissioner