



Legislative Assembly of Nunavut

REPORT REGARDING AN ALLEGATION OF
CONFLICT OF INTEREST AGAINST
HONOURABLE DAVID AKEEAGOK, MLA

Hon. J.E. (Ted) Richard
Integrity Commissioner
September 2018

REPORT REGARDING AN ALLEGATION OF CONFLICT OF INTEREST AGAINST HONOURABLE DAVID AKEEAGOK

Pursuant to section 40 of the *Integrity Act*, upon receiving a request from a member of the public who believes on reasonable grounds that a member of the Legislative Assembly has contravened a section of the *Integrity Act*, the Integrity Commissioner may conduct a review of the facts and provide a written report on the matter to the Speaker.

This report presents the findings of my review under section 40 in connection with an allegation by Lynda Orman, a former employee of the Government of Nunavut, that the Honourable David Akeeagok, MLA for Quttiktuq, and currently Minister of Economic Development and Transportation, contravened section 8 (conflict of interest) of the *Integrity Act* in April/May 2018.

First, some background facts.

The complainant Lynda Orman was employed as Manager Wildlife Research, Department of Environment, Government of Nunavut for approximately five years, 2013-2018. From the extensive documentation she has provided to me, it appears that throughout that time period there were many workplace issues and differences between her and her immediate supervisor, the Director of Wildlife Management Division. There were disciplinary proceedings in 2014, 2015, 2016, 2017 and 2018 in which the complainant received verbal warning, reprimand, suspensions, and in February 2018 she was dismissed from her employment with the Government of Nunavut.

Prior to his election to the Legislative Assembly in October 2017, David Akeeagok was employed as a senior public servant with the Government of Nunavut as follows:

2004 - 2006: Deputy Minister of Department of Culture;

2006 - 2009: Deputy Minister of Department of Community and Government Services;

September 2010 - November 2013: Deputy Minister of Department of Environment;

November 2013 - June 2016: Deputy Minister of Department of Executive and Intergovernmental Affairs;

June 2016 - September 2017: Deputy Minister of Environment.

Upon his election to the legislature, Mr. Akeeagok was appointed to Executive Council, and in the past year, has held the following portfolios:

November 2017 - June 2018: Minister of Finance, Minister responsible for the *Public Service Act*;

June 2018 - present: Minister of Economic Development and Transportation, Minister responsible for Mines, Minister responsible for Nunavut Business Credit Corporation, Minister responsible for Nunavut Development Corporation.

On August 1, 2018 I received two e-mails and five attachments from the complainant regarding her dismissal from employment on February 8, 2018 and her Level 3 Grievance against her dismissal which was heard by Minister Akeeagok in May 2018 as Minister responsible for the *Public Service Act*. In her nine page letter of July 31, 2018 she sought several heads of relief from the Integrity Commissioner. These initial requests included:

- a) a reversal of a disciplinary proceeding under the *Public Service Act* which occurred in October 2017;
- b) a reversal of a decision made by Deputy Minister Suvega in January 2018 regarding her harassment complaint against her supervisor;
- c) a recommendation that there be an independent investigation of the harassment complaint;
- d) a decision that Minister David Akeeagok, as Minister responsible for the *Public Service Act*, failed in the performance of his duties to uphold Government of Nunavut human resource policies;
- e) a direction that her Level 3 grievance of her dismissal be re-heard by an independent third party.

Appended to the complainant's letter of July 31, 2018 is a letter of reference from one of her work colleagues dated March 29, 2016.

Included with the materials sent to me on August 1 is a copy of a 28 page legal analysis by the complainant's lawyer, with an attached Compendium of Documents, all of which was apparently submitted in April 2018 on her Level 3 grievance of her dismissal.

In my response email to the complainant on August 5, 2018, I acknowledged receipt of the complainant's materials, and advised her that a) much of the subject-matter of her allegations are outside the mandate of the Integrity Commissioner; and b) I have no authority to consider or grant her requests for remedies outside my mandate. I explained that the mandate of the Integrity Commissioner is set forth in the *Integrity Act*. I explained

the process for initiating a Review by the Integrity Commissioner, as set forth in the Act, in particular that the request a) be made in writing; b) must set out an allegation of a specific contravention of a provision of the *Integrity Act*; c) must set out the grounds for believing that the contravention occurred; and d) must be supported by an affidavit of the complainant.

On August 21, 2018 I received the complainant's formal request for a Review, in the form of a 29-page affidavit affirmed August 17, 2018 (the bulk of the complainant's affidavit is more correctly described as arguments/submissions rather than allegations of fact which she affirms to be true).

On August 22 and August 23, I received from the complainant a further 37 emails each containing one or more attachments. Most of this extensive material relates to the subject-matter of grievances in the earlier disciplinary proceedings; some of the material is clearly not relevant to this Review under the *Integrity Act*, such as copies of presentations made by the complainant at conferences or elsewhere as Manager Wildlife Research; copies of dated testimonials, character references, etc. from work colleagues, other professional colleagues, etc.

Notwithstanding my explanation in my August 5 e-mail regarding the purpose of the *Integrity Act* and the mandate of the Integrity Commissioner, the complainant is not deterred. In her formal request of August 17 for a s. 40 Review, she reiterates her various claims for a re-visiting of the *Public Service Act* proceedings of 2017 and 2018, and seeks from the Integrity Commissioner, various findings and recommendations, including:

- a) declaration that Minister Akeeagok, as Minister responsible for the *Public Service Act*, has failed in his duty of care on grievance and harassment issues in the public service;
- b) declaration of the wrongful dismissal of the complainant by the Government of Nunavut;
- c) declaration that the Government of Nunavut failed to respond to her earlier grievance of November 2017;
- d) recommendation that the Legislative Assembly strike an independent investigation of the complainant's outstanding harassment complaint of January 15, 2018 against her former supervisor;
- e) a finding and recommendation regarding the complainant's Workplace Conflict Management complaint of January 5, 2018;
- f) declaration that the complainant's right to grieve discipline decisions was denied by the Government of Nunavut and by Minister Akeeagok;

- g) declaration that Minister Akeeagok condoned bullying and harassment in the public service;
- h) declaration that Minister Akeeagok failed to embody traditional Nunavummiut values, including Inuit values, in his actions as Minister responsible for the *Public Service Act*.

In the whole, the complainant's request for a Review under section 40 of the *Integrity Act* is an undisguised attempt to re-litigate the processes of and the results of disciplinary proceedings under the *Public Service Act* which occurred in 2017 and 2018. This is not the purpose of a Review (sections 36-45) under the *Integrity Act*. These matters are NOT within the mandate of the Integrity Commissioner.

Save one item. Within this prolix material there is an allegation that Minister Akeeagok contravened section 8 (conflict of interest) of the *Integrity Act*.

Conflict of interest:

"s.8. A member shall not make a decision or participate in making a decision in the performance of his or her duties of office or otherwise exercise an official power or perform an official duty in the exercise of his or her office if the member knows or reasonably should know that in doing so there is an opportunity to further the member's private interest or improperly to further another person's private interest."

The complainant submits that in May 2018 Minister Akeeagok, as Minister responsible for the *Public Service Act*, was in a conflict of interest when he considered the complainant's third level grievance from her termination from employment on February 8, 2018, on account of the fact that he was previously Deputy Minister of the department in which she was employed, i.e., Department of Environment and in which she had been the subject of earlier disciplinary proceedings. She submits that he ought to have recused himself from hearing the third level grievance.

I will briefly address the issue of recusal. Supervisors, adjudicators or tribunals in a disciplinary process or regime, such as in a public institution or other employment workplace or environment are not **per se** necessarily in a conflict of interest if a case (case B) comes before them and it involves a person or party who has previously been before that same adjudicator or tribunal (case A). The individual adjudicator or tribunal can decide to recuse himself/herself/itself, or not. There is no automatic requirement to do so. It is commonplace in the context of traffic courts, criminal courts, family courts, administrative tribunals, etc. that a party who has made previous appearance(s) appears again before the same adjudicator or tribunal. Sometimes there is recusal, often not. This is the reality in today's busy world. We elect people and we appoint people to positions

of authority and decision making and we trust and presume that those persons will exercise their authority, make their decisions, after rational deliberation free of pre-conceived notions or bias.

On the facts presented to me, there is evidence that Minister Akeeagok, while Deputy Minister of Department of Environment in January 2017, participated in the decision to impose a 10-day suspension on the complainant. There is no evidence that he participated in a subsequent 10-day suspension in October 2017 (as he was no longer the Deputy Minister of that department). However, to reiterate, the mere fact that Minister Akeeagok, the designated decision-maker under the *Public Service Act* and the *Public Service Regulations* in May 2018, had previously dealt with this employee on a discipline matter did not necessarily require Minister Akeeagok to recuse himself from this new matter of termination of employment.

Setting aside the issue of recusal, I turn to the more important issue of conflict of interest, specifically the prohibition described in section 8 of the *Integrity Act*.

Conflict of interest:

“s.8. A member shall not make a decision or participate in making a decision in the performance of his or her duties of office or otherwise exercise an official power or perform an official duty in the exercise of his or her office if the member knows or reasonably should know that in doing so there is an opportunity to further the member’s private interest or improperly to further another person’s private interest.”

The complainant was dismissed from her employment by letter of February 8, 2018, on grounds of misconduct.

By a 28-page letter of February 22, 2018, via email, the complainant wrote to Minister Akeeagok, Minister responsible for the *Public Service Act*, the letter marked Private and Confidential and entitled “Appeal of my dismissal February 8, 2018”. She states she is formally submitting grievance of her dismissal, and reserving her right to have her legal representative make further submissions. In this 28-page document there is no reference to a conflict of interest but rather the document deals extensively with the merits of her grievance against her dismissal.

The complainant’s Level 1 grievance was denied on February 28, 2018. Her level 2 grievance was denied by Pauloosie Suvega, Deputy Minister of Department of Environment, by letter of March 28, 2018.

On April 10, 2018, the complainant sent a letter to Minister Akeeagok, Minister responsible for the *Public Service Act*, entitled “Request for Level 3 consideration of

Dismissal Grievance”, with supporting materials. At one point within this document she states that the circumstances surrounding her dismissal may be seen to place the government and Minister Akeeagok in a position of conflict of interest. She suggests that the Minister might be advised to refer the matter to an independent third party, to avoid the government being subject to a Judicial Review application in the courts. She states she will be forwarding further detailed materials comprising her grievance in the next few days.

The following day, April 11, 2018 the complainant sent to Minister Akeeagok her lawyers’ legal analysis, a 28 page submission together with a lengthy Compendium of Documents. The lawyers made submissions to the effect that the complainant’s dismissal was wrongful, that there had been a lack of procedural fairness in the previous proceedings, and cited legal precedents in support of the Level 3 grievance. There was no mention of a conflict of interest.

By letter of May 4, 2018 to the complainant, Minister Akeeagok, Minister responsible for the *Public Service Act*, denied the complainant’s Level 3 grievance of her dismissal on February 8, 2018.

Notwithstanding that the *Public Service Regulations* state that the Minister’s decision is final and binding, the complainant again, by letter of May 31, 2018, wrote to Minister Akeeagok “re-requesting second, independent Level 3 grievance process due to perceived conflict of interest, bias”. In this letter she repeats much of the information submitted in her April 10/11 Level 3 grievance. I note that she copied her May 31, 2018 letter to the Premier, two other Ministers and two other MLAs (a political appeal?).

And now, an appeal to the Integrity Commissioner?

My review of the facts, leading to this Report, is confined to the subject-matter of an allegation of conflict of interest by a sitting member of the Legislative Assembly.

The expression “conflict of interest” implies two competing interests. In the context of the *Integrity Act*, the competing interests are a) the public interest and b) the member’s private interest (or another’s private interest).

That these are the competing interests is confirmed by various references within the *Integrity Act*:

- in the iteration of principles (section 2), reference is made to a member’s “private affairs” and “reconciling their public duties and private interests”;

- in the iteration of a member’s general obligations (section 4) reference is made to “arranging his or her private affairs”;

- and most importantly, the wording of section 8, which prohibits a member of the Legislative Assembly from exercising his duties of office or making decisions when in a position of conflict of interest. I set forth once again the specific wording of section 8:

Conflict of interest:

*“s.8. A member shall not make a decision or participate in making a decision in the performance of his or her duties of office or otherwise exercise an official power or perform an official duty in the exercise of his or her office if the member knows or reasonably should know that in doing so there is an opportunity to further the **member’s private interest** or improperly to further **another person’s private interest.**”* (emphasis added)

Within the written submissions and the volumes of material the complainant has provided to me, there is an absence of evidence of any “private interest” that David Akeeagok had in relation to the decision he was to make on this level 3 grievance as Minister responsible for the *Public Service Act* in May 2018. There is, similarly, an absence of evidence of any other person’s “private interest” that may have been furthered by David Akeeagok’s decision on the complainant’s level 3 grievance.

A bare allegation of the existence of an “old boys club” or “power triangle” within the Department of Environment, without supporting evidence, is meaningless and without import. The complainant, in her submissions, uses expressions such as:

“the Minister’s decision **may be seen** as condoning the bullying and harassing behavior of Director X”;

“the set of circumstances surrounding the dismissal **may be seen** to place the government and the Minister in a position of conflict of interest”;

“the Minister’s dismissal of my grievance **demonstrates** conflict of interest”;

“the Minister in denying my grievance **was inclined to support** the flawed findings and actions of his departmental officials”.

“the Minister in denying my grievance was preserving [sic] his departmental officials from the consequences of their alleged improper actions”;

“the Minister **may have had** a private interest to prevent an harassment investigation against Director X”;

“the Minister **may have been swayed** to offer protection/harbour from the consequences of what **may be considered** significant and damaging errors by his departmental officials”.

None of this is evidence. None of these are statements of facts.

The facts presented to me by the complainant do not reveal any “private interest” of Minister David Akeeagok in the performance of his public duties as Minister responsible for the *Public Service Act* on the complainant’s level 3 grievance in May 2018. Similarly, the facts do not reveal any “private interest” of any other person in the Minister’s decision on the level 3 grievance. There were no “private interests”, within the meaning of section 8, in competition with the public interest, when the Minister made his decision on the complainant’s level 3 grievance from dismissal.

I find that member David Akeeagok did not contravene the *Integrity Act*.

Respectfully submitted,



Hon. J.E. (Ted) Richard
Integrity Commissioner of Nunavut

September 21, 2018