

DECISION

**PURSUANT TO SECTION 17 OF THE CONFLICT OF INTEREST
(MEMBERS AND MINISTERS) ACT**

OF A COMPLAINT BROUGHT BY

PETER JENKINS, MLA, KLONDIKE

against

THE HON. PAT DUNCAN, MLA, PORTER CREEK SOUTH

**THE HON. TED HUGHES, Q.C.
COMMISSIONER
YUKON TERRITORY**

November 29, 2001

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1. THE COMPLAINT

On May 8, 2001 Peter Jenkins, MLA for Klondike, wrote to me “...pursuant to the *Conflict of Interest (Members and Ministers) Act* to register a complaint against the MLA for Porter Creek South, the Premier, Ms. Pat Duncan”. By Section 17 (1) (d) of that *Act* (hereinafter referred to as “the *Act*”) I am directed to “investigate complaints made...by a Member that a Member or Minister is or was in conflict.”

The *Act* requires that I inform the Member against whom the complaint is brought of the particulars of the complaint and give to her reasonable opportunity to make representations to me in response to the complaint. There has been compliance with that statutory requirement.

My responsibility is to investigate the complaint and decide whether or not Ms. Duncan is or was in a conflict of interest and to report my decision and the reasons for it to the Legislative Assembly and deliver a copy of it to the Member whose conduct has been under investigation. This document is my decision and is delivered on its date to the Legislative Assembly and separately to the MLA for Porter Creek South.

Mr. Jenkins’ letter of complaint is attached as Appendix I to this decision. The underlining was done in the course of my study of the letter and special significance does not attach to it. In the first paragraph Mr. Jenkins advised that he had received an anonymous e-mail dated April 4, 2001 which he said “made serious allegations against Ms. Duncan concerning conflict of interest and abuse of authority”. He identified that e-mail as the one he had forwarded to me on April 5. The essence of the complaint is summarized in the second paragraph of the letter where Mr. Jenkins alleges that on two separate occasions Ms. Duncan, acting in her capacity as Minister of Economic Development, instructed the Deputy Minister of that department to “**single out and demand the immediate repayment of outstanding loans**” that a company owned by Mr. Jenkins has with the Government of Yukon, while at the same time instructing him “**to conceal the indebtedness**” owed to the Government of Yukon by a company, Total Point Inc., partially owned by her brother. Those two highlighted quotes summarize in a succinct manner what this investigation is all about.

2. STATUTORY PROVISIONS

Mr. Jenkins alleges breach of sections 2 and 3 (1) (b) of the *Act*. Those sections read:

2. A Member and a Minister is in a conflict of interest if the Member or Minister
 - (a) makes a decision in the execution of his or her office, or
 - (b) participates in the making of a decision in the Legislative Assembly or in Cabinet, or
 - (c) makes representations to another Member of Minister about what decision that Member of Minister should make, or
 - (d) discharges any other official function in the execution or his or her office

and at the same time knows or ought to know that in the decision or function there is the opportunity, or the reasonable appearance of an opportunity, for the Member of Minister to further his or her own private interest.

- 3.(1) A Member and a Minister is in a conflict of interest if the Member or Minister:
 - (b) uses their office to further their private interest by influencing a decision to be made by another person, regardless of whether that person is a public official;

Section 14 (3) of the *Act* provides that “A Minister is in a conflict of interest if he or she violates a rule of conduct”. Section 15 (1) of the *Act* says that rules of conduct for Ministers include:

- (a) the *Code of Ethics* established by Schedule B of Order-in-Council 1981/085 under the *Yukon Act*;
- (b) the *Executive Council Code of Conduct Regarding Conflict of Interest* tabled in the Legislative Assembly on April 6, 1981.

Mr. Jenkins alleges violation of Sections 1, 3 and 5 of the *Code of Ethics*. Those sections read:

1. A member shall ensure that all his affairs are conducted and that no conflict arises and no conflict appears to arise between his private interests and his public duties.
3. A member shall not use information privy to the Executive Council in such a way as to derive a profit or advantage for himself, his family, friends or associates.
5. Whenever a matter comes before a department for which he has responsibility which involves a personal interest such that it might be construed as influencing the impartiality of his judgment, a member shall bring the matter to the attention of the Executive Council and request that a colleague be appointed to act for the department concerned for the purpose of dealing with that matter.

Mr. Jenkins also alleges violation of subsections 2 (2) and 3 (1) of the *Executive Council Code of Conduct Regarding Conflict of Interest*. Those sections read:

2. (2) No member nor any of his family shall engage in any

employment, business or profession that actually or apparently causes a conflict of interest with his duties as member or might reasonably be expected to create such a conflict during his term of office.

3. (1) No member nor any of his family shall either directly or indirectly, by himself or with the interposition of a third party, hold or enter into any contract with the Government of Yukon under which any money or other benefit accrues to the member or any of his family.

Exceptions to the requirements of subsection 3 (1) are provided in subsection 3 (2).

On May 14 I asked Mr. Jenkins if he could ascertain the dates on which Ms. Duncan is alleged to have given the instructions to the Deputy Minister. He advised me on May 23 that the date of the initial occasion was June 30, 2000 and the second occasion was during the week of September 18, 2000.

Because the *Executive Council Code of Conduct Regarding Conflict of Interest* defines “family” as “a member’s spouse and dependents that normally reside with him” I asked Mr. Jenkins to expand on the basis on which he argued the applicability of sections of this *Code* to the situation at hand. He replied on May 31, 2001:

While it is true that Pat Duncan’s spouse is not an employee of Total Point Inc., he is an employee of Total North Communications Ltd. Total Point Inc. is merely a shell company having no employees to which the government contract was let with the work actually being carried out by Total North Communications Ltd. It is my information that Pat Duncan’s spouse did in fact work on the project in question. Accordingly, I would argue that Ms. Duncan has violated section 2(2) of the **Executive Council Code of Conduct**. She has placed herself in a conflict of interest situation by issuing instructions in her capacity as the Minister of Economic Development to the Deputy Minister of Economic Development about concealing the indebtedness of a company employing her spouse and owned by her brother. I would further argue that Ms. Duncan through her instructions has attempted to accrue a benefit to a company employing her spouse and owned by her brother in contravention of section 3(1) of the said **Code**.

On June 12, 2001 I wrote to Mr. Jenkins advising him that I accepted for investigation the complaint that the Minister had instructed the Deputy Minister to “conceal the indebtedness” owed to the Government of Yukon by Total Point Inc., a company in which her brother has an ownership interest. I asked for further representations on the issue of the alleged “singling out” of his own company for immediate repayment because of my uncertainty that that allegation addresses conduct prohibited by the *Act* or *Codes*. I acknowledged to Mr. Jenkins that the

evidence on the second matter might be so inextricably linked to the evidence on the first matter that there will be a reference to it during my investigation of the complaint that I have accepted for investigation but that in itself would not confer jurisdiction on the second matter.

In reply to me on June 21, Mr. Jenkins, in support of his view that I have the jurisdiction to investigate the second matter, made reference to sections previously cited to me, namely section 2 and subsection 3 (1) (b) of the *Act* and section 3 of the *Code of Ethics*. He also raised a possible violation of section 3 (1) (a) of the *Act* which reads:

3.(1) A Member and a Minister is in a conflict of interest if the Member or Minister:

(a) uses to further their own private interest information that they acquire by virtue of their office but which is not available to or accessible by the general public.

As to the applicability of that subsection Mr. Jenkins said:

In my view, Ms. Duncan has breached subsection 3(1)(a). She has improperly used information, that she has acquired by virtue of her office as the Minister of Economic Development that is not available to or accessible to the general public, in order to further her own private interest by singling out my outstanding loans for immediate repayment while taking no similar action against the outstanding loans of other companies or revealing the indebtedness of a company owned by her brother. This improper use of privileged government information, in my view, constitutes an abuse of office and by virtue of subsection 3(1) (a) places Ms. Duncan in an alleged conflict of interest situation.

Linking that argument to section 3 of the *Code of Ethics* Mr. Jenkins then said:

Ms. Duncan used information privy to her office as the Minister of Economic Development not only to conceal the indebtedness of her brother's company but to single out my company's outstanding loans from all the other outstanding loans owed by other companies. It is my opinion that she was going to use this information to gain a political advantage.

On July 19 I advised Mr. Jenkins that the portion of his complaint with respect to the indebtedness of his company did not fall within the parameters of the *Act*. I advised as follows:

The argument you advance is that the Minister used her position to gain a political advantage. If what you allege is correct, that would be the case. I have concluded, however, that purely political interests are not encompassed by the words "own private interest" in sections 2 and 3 (1) (a) and the words "private interest" in section 3 (1) (b) of the *Act*. I do not believe that a political edge gained by an individual member constitutes a private interest under the statute. In summary, your second complaint lies outside of the jurisdiction of my office.

When I met with Mr. Jenkins on July 19 he expressed the view that in my letter of that date I had reached my interpretation based on a consideration of the provisions of the *Act* “alone” without reference to Section 3 of the *Code of Ethics*. Mr. Jenkins was correct in that conclusion. He asked for further consideration of section 3 of the *Code of Ethics* and followed with a letter dated July 24 stating that it was his contention that the word “advantage” in section 3 of the *Code of Ethics* could be interpreted to include a “political interest, benefit or advantage” and accordingly it was his belief that this section of that *Code* “authorizes” me to investigate the second branch of his complaint.

On July 19 I also met Premier Duncan and advised her of the complaint that I had received relating to the allegation that she had instructed the Deputy Minister of Economic Development to “conceal the indebtedness” owed to the Government of Yukon by Total Point Inc., a company in which her brother has an ownership interest. I identified for the Premier the sections of the *Act* and the *Codes* that Mr. Jenkins alleged such a concealment would violate and of the reasons Mr. Jenkins had advanced to me that led him to the conclusion that he had reached. I advised the Premier that in my opinion the complaint against her raised serious issues and it was my belief that she ought to obtain legal advice and assistance. She subsequently did so and, in my judgment, the expenses incurred in doing so ought to be borne by the public treasury and not by Premier Duncan in her personal capacity.

In responding to his letter of July 24 I advised Mr. Jenkins on August 8 as follows:

I have decided that since evidence is to be taken on the complaint that I have accepted and since I have already acknowledged to you that the evidence relating to the two matters may be inextricably linked, I will proceed with the taking of the evidence during the course of my investigation on both complaints but reserving my decision on the jurisdiction issue with respect to the second complaint until all of the evidence has been received and considered. Once that stage of the investigation has been reached I will make my decision on that point and it will be communicated to you and to Premier Duncan.

Accordingly, the simultaneous taking of evidence on both complaints will proceed. Premier Duncan has been so advised.

In advising Ms. Duncan I acquainted her with the position taken by Mr. Jenkins with respect to section 3 of the *Code of Ethics*.

3. INTERVIEWS CONDUCTED AND EXHIBITS FILED

I requested Mr. Jenkins and Ms. Duncan to supply the names of all persons they believed could assist me in my investigation. They each complied with the result that, including themselves, I had a list of fifteen persons to be interviewed. Between August 13 and September 18 I held a preliminary interview with those fifteen individuals and an additional five persons whose names had surfaced during my discussions and whom I thought might be of assistance to me. Of the twenty persons interviewed I concluded that fourteen of them had significant information to offer with the result that between September 24 and October 4 I conducted formal interviews under oath with those fourteen persons in the presence of a verbatim reporter. At the conclusion of the fourteenth interview I decided to interview a fifteenth person and I proceeded immediately to do so. A list of the fifteen persons interviewed (referred to as witnesses), in order of their appearance, is attached as Appendix II

All persons suggested by Mr. Jenkins are included in the group of fifteen persons who were interviewed. Three of those suggested by Ms. Duncan were interviewed in my preliminary process but were not interviewed in a formal way because I concluded they did not have evidence that I considered to be germane to my investigation. Those three were Gordon Duncan, brother of Ms. Duncan, Joe Muff, a business associate of Mr. Duncan, and William Byers, Deputy Minister of Justice, Yukon Territory. Two of the five persons I interviewed on my own initiative at the preliminary stage are included in the fifteen persons who were interviewed in a formal manner.

The facts that I have found and the conclusions I have reached are based on the content of those formal interviews and the twenty-three exhibits marked during those interviews, a list of which will be found in Appendix III.

While the *Act* gives me the powers and privileges of a board of inquiry under the *Public Inquiries Act* which includes the power to subpoena witnesses, it was not necessary for me to use that power of subpoena during this investigation. All persons including Mr. Jenkins and Premier Duncan gave me their cooperation as I carried out my assignment.

The wisdom behind the 1999 amendment to the *Public Service Act of Yukon* which enacted the following provision may well have been a contributing factor to the full and complete cooperation I received from the members of the public service whom I interviewed:

224 An employee who, at the request of the commission, is assisting the commission with respect to an investigation of a matter under this Part, Part 4 of the *Cabinet and Caucus Employees Act*, or the *Conflict of Interest (Members and Ministers) Act* may not be penalized for giving the assistance requested by the commission.

The degree of cooperation I received from government employees was such that I have decided not to file the transcripts of evidence but, rather, to set forth in this decision an extensive summary of the evidence that was given by each witness that I consider to be germane to my investigation. Once I received and reviewed the transcripts I came to appreciate that public servants had spoken to me in a frank and honest way - often on sensitive matters particularly with respect to personnel issues. In summarizing the evidence I have been conscious of those sensitive matters particularly as they pertain to personal relationships between people who continue to work together and are genuine team players as they serve their employer to the best of their abilities. In that way I have been able to report all relevant evidence while respecting the frankness with which many of those who were interviewed spoke. As a result I believe that the occupant of the position of Commissioner of Conflict of Interest will, on future occasions, receive the same excellent cooperation I received on this occasion from members of the public service.

As not all twenty-three of the exhibits filed in the course of the investigation have been appended to this decision, I will file all exhibits with the Legislative Assembly at the time of delivery of my decision to that body on November 29.

4. **THE ANONYMOUS E-MAIL OF APRIL 4, 2001 AND ITS APPEARANCE IN THE YUKON LEGISLATIVE ASSEMBLY**

Approximately nine months passed between the dates in the summer of 2000 when Ms. Duncan is alleged to have given the instructions to the Deputy Minister and the time when the issue now under investigation surfaced in the public domain. The anonymous e-mail to which Mr. Jenkins referred in his formal complaint is Exhibit 9 and it reads:

From: auto 109805@hushmail.com
To: Peter Jenkins <peter.jenkins@yla.gov.yk.ca>
Cc: Eric Fairclough <eric.fairclough@yla.gov.yk.ca>;
Ken Bolton <ken.bolton@yla.gov.yk.ca>; Gordon Steele <Gordon.Steele@yla.gov.yk.ca>;
Star Editor <editor@whitehorsestar.com>; Richard Mostyn <rmostyn@yukon-news.com>
Subject: Pat Duncan is lying
Date: Wednesday, April 04,2001 4:11 PM

Duncan's comments have really got us pissed off. Lots of people know the story behind her brother's loan but are afraid to say anything. You are the one that she is after. She knew from the first day the score on her brother's loan and wanted it deep-6, but she wanted your's called in. The story around here is she fired Maurice Albert because he wouldn't do what she wanted. Check around. The truth is out there. Call Maurice. Free, encrypted, secure Web-based email at www.hushmail.com

Mr. Jenkins' fax to me of April 5, to which he attached a copy of the e-mail is Exhibit 13.

Exhibit 14 is a memorandum faxed to me by Mr. Jenkins on April 23 to which he attached pages 1816 and 1817 from the April 19 edition of Hansard in which the following is recorded during the Question Period portion of the proceedings of that afternoon:

Mr. Jenkins: I have a question today for the Premier. Yesterday the Premier tabled a letter that she stated was sent to me by a constituent of mine, which in fact was sent by a resident of the Whitehorse area. Now that the Premier has established the practice of tabling personal correspondence in the House, I would like to respond in kind by tabling an e-mail that I received about the Premier. It is entitled, "Pat Duncan is--" and I can't say the next word, Mr. Speaker, because it is unparliamentary.

Mr. Jenkins then read the April 4 e-mail into the record and after advising the House that he had forwarded a copy of it to me, he asked whether the Premier would care to comment. The Premier did not respond but the Honourable Dale Eftoda, Minister Responsible for Education, Renewable Resources and the Public Service Commission, advised Mr. Jenkins that it "...would be incredibly

inappropriate for the Premier to respond...”. Mr. Jenkins advised the House that “It would appear that the e-mail that I have tabled was prepared by someone in government”.

Questions by other Opposition Members on other matters then followed and the Ministers responsible replied. At the conclusion of Question Period on that day the Speaker of the Assembly spoke as recorded at page 1819 of Hansard:

Speaker: Order please. The Member for Klondike has attempted, during Question Period, to table a document that is an e-mail communication from an unidentified anonymous source. The content of that document, which the Member for Klondike read into the record, was offensive.

Members should recognize that they cannot bring something before the House that is unparliamentary on the basis that someone else has written it. That is out of order.

Because this has just happened and is deserving of reflection by the Chair, the Chair directs that the table not yet enter the document as a tabled paper of this House.

The Chair will review the matter and report back on the next sitting day.

We will now proceed to Orders of the Day.

Attached as Appendix IV are pages 1842 to 1844 of Hansard for April 23, 2001. On that occasion the Speaker ruled that the April 4 e-mail that Mr. Jenkins “...attempted to table on April 19 not be entered in the working papers of the Assembly at this time. The Chair further directs that the Clerk maintain it in a secure place and place it in the working papers or make it available only upon receiving future instruction to do so from the House or the Chair.” In response to the directive of the Speaker that he withdraw completely and unequivocally the offensive language that he used in the House on April 19, Mr. Jenkins is recorded as follows:

Mr. Speaker, with respect to the withdrawal of the remarks made, I hereby withdraw them.

Three paragraphs from the Speaker’s ruling of April 23 are particularly pertinent and relevant to my task:

The Member for Klondike, then, has two choices: he may either inform the House of the name of the person who wrote the e-mail communication that he quoted from, or he must take full responsibility for its contents.

The difficulty, of course, with either option is that the unparliamentary language and the extremely serious allegations contained in the communication have been made known and widely circulated through a variety of media. This includes the Assembly’s Blues, which are published both in print and on the Assembly’s Web site, the television and radio broadcasts of the proceedings of this House, and newspaper and radio reports. Even were the House to order the offending remarks expunged from Hansard - a drastic and, for this House, unprecedented action - it would accomplish little to alleviate the harm already done.

The freedom to speak freely in this House is the most important of all the

privileges of members. It is a right that this Assembly and other parliamentary institutions have diligently guarded because it is essential to members being able to represent and speak on behalf of their constituents to the fullest degree without fear of reprisal. However, it is a humbling right that carries with it the absolute requirement that it be exercised in a careful, responsible manner because its abuse can bring great harm to others and to the reputation of this institution and all its members. The Member for Klondike must understand that, in doing what he has done, he has lost sight of his obligations and failed to meet a standard of behaviour that can rightly be expected of members of this Assembly.

In deciding that the formal complaint filed with me by Mr. Jenkins ought to be investigated I was motivated by two factors. If the allegation of “concealment” is true, a basis could well exist to conclude that a breach of the *Act* had occurred. Of equal importance is the fact that if the allegations of “concealment” and “singling out” are not true a significant and serious smear of the reputation of the Premier of Yukon would have occurred within the protected environment of the Legislative Assembly with the result that the smear, if it was that, could be and indeed has been repeated on many occasions by the media with complete immunity because of the protected forum in which Mr. Jenkins spoke.

5. THE SOURCES RELIED ON BY MR. JENKINS IN ADVANCING HIS COMPLAINT

I asked Mr. Jenkins whether he had any personal knowledge with respect to the allegations he had made. After saying that he had assembled a whole series of information from a number of different sources he said:

The information that I have is all secondhand information. I would--I'm not comfortable with referring to it as hearsay, in that it goes beyond hearsay. It's very, very accurate recountings of information conveyed to me, some anonymously, some openly, from Maurice Albert, and just situations that were unfolding with respects to how the Department of Economic Development was treating the loans that my company had, vis-a-vis their treatment of other loans in a similar situation. It didn't add up. It was--I was being treated differently.

Two follow up questions were then put to Mr. Jenkins and he gave the following answers to them:

Q All right, now you've identified Mr. Albert, and I'm going to come to what he told you in a minute. But who else did you gain information from, when you talk about other sources?

A Two anonymous phone calls, that knew very much what they were speaking of. They did not wish to be identified, they didn't identify themselves to me.

Q Did you know who they were?

A I had an idea but, no, I did not.

Q Are you prepared to put names on the record for me today?

A No, sir, it would be totally unfair if I did so.

Later in the interview Mr. Jenkins said that the April 4 e-mail certainly precipitated his further inquiries. He said he gave "a lot of weight" to what Maurice Albert had told him and some weight to the anonymous phone calls. He added that a further component was how he and his company were "being treated by the Department of Economic Development. It basically was hands off".

I now turn to a consideration of the three sources relied upon by Mr. Jenkins in advancing his complaint:

- (i) Anonymous communications:
 - (a) the April 4 e-mail
 - (b) telephone calls

- (ii) Treatment by the Department of Economic Development of Mr. Jenkins, his company and its loans.
- (iii) Verbal communication with Maurice Albert.

(i) Anonymous Communications

(a) The April 4 e-mail

Mr. Jenkins identified those to whom the April 4 e-mail had been sent:

- (1) Eric Fairclough - Leader of the New Democratic Party and Leader of the Official Opposition in the Legislature.
- (2) Ken Bolton - The New Democratic Party's researcher and its main staff member at the Legislature.
- (3) Gordon Steele - researcher and staff person at the Yukon Party office at the Legislature.
- (4) The Star Editor - Editor of the "Star" newspaper published in Whitehorse.
- (5) Richard Mostyn - reporter for the "Yukon News", a newspaper published in Whitehorse.

Mr. Jenkins is the Leader of the Yukon Party and is the sole member of that party elected to the Legislature in the general election of April 17, 2000. Premier Duncan is the Leader of the Liberal Party and is one of ten Members of the Liberal Party elected to the Legislature in that election. The Party added an additional member to its ranks in a November 2000 by-election. Mr. Fairclough is one of five Members of the New Democratic Party Caucus.

I asked Mr. Jenkins what led to his conclusion that the e-mail was prepared by someone in government. He replied:

Information that had been provided to me anonymously; information that I had gleaned from a number of various sources; and the fact that this area was pretty well confidential, and known only in, and impacted on, government circles.

I pressed Mr. Jenkins in the following questions for assistance in tracing the author of the e-mail:

- Q Do you know who the author of the e-mail is?
- A I have not had that confirmed 100%, no, sir.
- Q Does that mean you've had some indication but you haven't been able to verify it 100% to your satisfaction?
- A That's correct, sir.
- Q Are you in a position to put the name of the person, that you have information on, on the record today?
- A No, Mr. Hughes, I'm afraid I cannot do that, in that I do not have a hundred per cent confirmation as to the author of that anonymous e-mail.
- Q Is there any way that you think we could ferret out who that might be?
- A Probably by asking a number of individuals, on this list, directly that question.
- Q And when you refer to that list, I believe you're looking at the list that I gave you, of the people that I'm going to be interviewing over the course of this week?
- A That's correct.
- Q And have you reason to believe that there is someone, named on that list, who knows who the author of that e-mail is?
- A I believe, if they do, they'd be reluctant to convey that information to you, given that it might impact on their position within government.
- Q Well, be that as it may, is it your view that there is one or more names on that list who knows who the author of this e-mail is?
- A I would be of the opinion that they would have a clear understanding who this e-mail originated from, yes.
- Q All right, I won't press you further on that; I'll ask each of those individuals --
- A Okay.

The list to which Mr. Jenkins refers contained the names, besides his own, of the persons identified as numbers 3 to 14 in Appendix II. As I had been otherwise unsuccessful in inquiries I had made in ascertaining the author of the e-mail, I specifically asked each of the twelve persons identified by Mr. Jenkins whether they could offer any assistance to me in determining who wrote and distributed the e-mail. Each of the twelve persons questioned said they had no information that would assist in tracing the author.

I told Mr. Jenkins that I was anxious to talk to the person who had circulated the e-mail which led to this investigation, and I asked him to make further contact with me if he could be of any further assistance. I have not heard further from him.

I, of course, sought assistance from Mr. Albert in ascertaining the source of the e-mail. He said a copy of it was sent to him at or about the time of the distribution of it to the others along with an accompanying note that said something to the effect "Isn't it time you go after her". Mr. Albert agreed that the e-mail appeared to be prepared by someone in government and he said "...it's somebody that knew me". He said he didn't know whether it was somebody he may have talked to about the matter. He agreed that it was sent by someone intent on taking the matter into the political arena. Beyond what I have indicated Mr. Albert said he was not able to be of further assistance to me in making an identification.

What I have reviewed above is the sum total of all I was able to learn about the e-mail. I attach absolutely zero significance to it and judge it to be of no assistance whatever as I pursue my investigation into whether Ms. Duncan violated the provisions of the *Act* or the *Codes*. The author of it is a contemptible coward with his or her own agenda which clearly includes, and perhaps exclusively relates to, political matters. Lacking the courage to be identified as the author, the e-mail, far from bolstering Mr. Jenkins' complaint, causes me to move forward in my examination of Mr. Jenkins' other sources with added caution because the prospect that this process was maliciously put in place to do severe damage to a successful political career is very real.

(b) Telephone Calls

The content of the two anonymous telephone calls referred to by Mr. Jenkins are, like the e-mail, and for the very same reason, without significance or assistance to me. Mr. Jenkins said the callers "knew very much what they were speaking of" and that their calls came "after the e-mail became public knowledge". He said he gave weight to them in bringing forward his allegations. They carry no weight with me. Not knowing who these people are, I cannot interview them and to expect me to give credence to the content of their calls without seeing and talking to them is an unacceptable and preposterous proposition.

(ii) Treatment by the Department of Economic Development of Mr. Jenkins, his company and its loans

Dawson City Hotels Ltd. is indebted to the Yukon Government as a result of two “business loans” made to provide the hotel with working capital, the first for \$50,000 made in February 1988 and the second for \$75,000 made in June, 1990. At the time of granting the loans the sole owner of Dawson City Hotels Ltd. was the now ex-wife of Mr. Jenkins. Since the mid 1990’s Mr. Jenkins has been the sole shareholder of the company.

In all, the Yukon Government has approximately 8.4 million dollars owing to it by approximately fifty borrowers under four different loan programs, the majority of which are “business” loans. 5.4 of the 8.4 million dollars are actual arrears but the additional 3 million dollars could be called for payment because of the arrears that have accumulated with respect to the loans. The two Dawson City Hotels Ltd. loans are included in those figures.

With respect to the 1988 loan, as of June 30, 2000 there were \$89,084.00 owing of which \$12,945.00 were actual arrears. With respect to the 1990 loan, as of June 30, 2000 there were \$140,983.00 owing of which \$107,055.00 were actual arrears. As of August 16, 2001 the amount owing under the 1988 loan had grown to \$93,979.00 and the 1990 loan to \$152,526.00. There has been no payment on either loan since 1996. Mr. Jenkins explained why that was so:

Every year, the principals from Economic Development attend at the hotel, with the exception of this year, and go over the financial position and say, well, doesn’t look like it’s going to be practical to make any payments, so we’ll extend forgiveness for your next year. And there’s usually two individuals that attend from the Department of Economic Development; Val Mather and--I believe the last time, it was Mike Kenny.

Q And is anything recorded in writing on those occasions, either from them or from you, to confirm the new arrangement?

A No, not that I’m aware of. We provide them with the financial statements, they look at the financial statements on an ongoing basis, and just shake their head and just say, well, you’re very similar to all the other hotels that we have in this-- have granted these type of loans to. And they say, well, we’ll look at it again next year.

Val Mather is the Director of Corporate Services in the Department of Economic Development. He holds responsibility for the collection of outstanding loans. He confirmed that the practice is to pay an annual visit to those indebted to the government. I asked Mr. Mather what would

decide whether to press for payment or let the situation sit for another year. He replied:
I don't think we ever pressed for payment. We'd always want to find out the story, how the business did the last year, the business pressures. We had a fairly good indication of dealing with them what the situation was. I mean, you can go up the Alaska Highway and if you see sometimes somebody had leased his premise out to somebody else and wasn't in the business; but they would give us, you know, their stories, their financial difficulties. Maybe they're dealing with other banks and paying those off and always a promise they'd repay, they'd get around to us and want to pay their higher interest loans off first, which made sense or maybe they had a higher priority; and we knew their loan situation. We just wanted to see the state of the business, I think, in a first-hand way and make our presence known once a year.

In identifying the treatment by the Department of Economic Development of Mr. Jenkins, his company and his loans as one of the three sources relied on in advancing his complaint, Mr. Jenkins' point is that in the year 2000 an actual visit had not occurred because, when the department officials were in Dawson City he had had no advance warning of their arrival with the result that he was not available to meet with them and they had just left a note for him. Further, in 2001 he received no visit at all, whereas he had been told by members of the business community in Dawson City that representatives of the Department of Economic Development had been in town but, as Mr. Jenkins saw it, he "was omitted from the list of firms that was visited" in 2001. Mr. Jenkins was asked whether there was anything else, other than the absence of visits in 2000 and 2001, that pointed to his treatment by the Department of Economic Development being different than other debtors were receiving. He responded:

Yes, over eight or nine years, you develop a rapport with the individuals that are coming and visiting your business. You maintain that rapport. And it's a back and forth exchange of information. Because, by and large, the individuals in Economic Development, that visit our firm, are just as concerned with its ongoing viability as we, as the owners, are--or I am the owner, is. And that open dialogue and exchange of information suddenly ceased. It was very terse record--a note, handwritten note, in August of 2000, and then, subsequently, no further exchange of information; not even an acknowledgment of a receipt of financial information that was subsequently sent to the Department of Economic Development in March or early April of 2001.

Mr. Jenkins summarized the change in his treatment as being no annual visit, no annual request for information and no ongoing request for information and at the same time he had not found one other debtor who told him that his or her treatment had changed.

Mr. Mather was asked about Mr. Jenkins' allegation of "change of treatment" with emphasis on the circumstances surrounding the "note in 2000" and "no visit" in 2001. Mr. Mather

acknowledged that the Department had missed personal contact with Mr. Jenkins in 2000. He explained, with respect to that year:

Q Did you go to his premises and find him not there?

A That's right

Q But you made a request for financial statements, I think you said?

A That's right.

Q Did you leave a note?

A Yes.

Q And is that a common practice when you don't find them in?

A I mean, I have no problems doing that. We don't do it that often, but that would be common if they were not in and we wanted financial statements, yes.

Q Is it usual that you set up these appointments in advance, or do you just get on the road and call in and take your chances?

A We go on the road and take our chances. We have to see a number of clients along the way, so that's how we do it.

Q So, this wouldn't be unusual to have dealt with Dawson City Hotels in that way --

A That's right.

Q -- in the year 2000?

A That's right.

Q And I take it that Mr. Jenkins did respond and give you the financial statements?

A That's right.

With reference to 2001 Mr. Mather's evidence is as follows:

Q Now, what about the year 2001, this year have you made a similar kind of trip?

A No, not yet; we might go out. It's a busy time. If I get time, I might go out; but it's almost too late right now, because the tourist season is down, and a lot of people are away. I think if I get a chance, we'll do some swings out.

Q Well, have you earlier in this calendar year gone to Dawson on this kind of a mission?

A No, no, I just do that once a year.

- Q And you haven't been there in 2001?
- A 2001, no, no trips this year.
- Q So, you haven't excluded Mr. Jenkins from a visit?
- A (No oral response)
- Q That is, you haven't gone and visited others in debt and left him out--
- A No.
- Q --and didn't favour him with a visit?
- A No.
- Q Well, he tells me he feels he's been treated differently this last couple of years: Number one, only getting a note in the year 2000 and no visit at all in 2001; and he feels he's been dealt with differently than other people. You wouldn't agree with that?
- A No, I wouldn't.
- Q And has your handling of his loan throughout the years 2000 and 2001 been the very same as you've handled other loans owing by businesses in Dawson?
- A That's right.

I accept Mr. Mather's explanation with respect to the years 2000 and 2001. The reason for the "note", rather than a face to face visit that Mr. Jenkins would have preferred, is understandable and the explanation given by Mr. Mather is reasonable. With Mr. Mather's office in Whitehorse and Mr. Jenkins being present in Whitehorse many weeks of the year attending to his duties as a member of the Legislature, it surely would have been a simple matter for him to go to Mr. Mather's office - at the most a few blocks away from the Legislature building - and engage Mr. Mather in the discussion he would have preferred. No field trips were made into the Dawson area in 2001. Mr. Jenkins is mistaken in his belief that other debtors in his community received the annual visit this year from Mr. Mather and his associate.

I dismiss in its entirety this second basis on which Mr. Jenkins advanced his complaint against Ms. Duncan. His treatment by the Department of Economic Development was no different than that afforded to others. If the outstanding loans collection process of the Department of Economic Development was, as Mr. Jenkins said he experienced it in 2000 and 2001, and is, as

he described it, “basically hands off” then it was “hands off” for everyone and the wisdom or otherwise of that approach is not a matter for my consideration. I find it somewhat incongruous that one of the reasons Mr. Jenkins advances for his belief that his company’s loans were being “singled out” for immediate repayment is that he was being ignored by the Department as it pursued a “hands off” approach to the collection of his loans.

That leaves for my consideration the only remaining source of possible substance on which Mr. Jenkins relies in advancing his complaint - what was told to him by former Deputy Minister Maurice Albert.

(iii) Verbal Communication with Maurice Albert

Mr. Jenkins acknowledged that around the time he read the April 4 e-mail into the record in the Legislature he telephoned Mr. Albert. He said his call was prompted in part by the e-mail and in part by an anonymous telephone call in which he was told that there was considerable substance to this matter. He thought that the phone call came from someone in the Department of Economic Development.

Mr. Jenkins says that Mr. Albert confirmed to him that the substance of the e-mail was accurate and that he had been told by Premier Duncan to go after his loans and that he had set the wheels in motion in the Department to initiate an approach in compliance with that instruction. Mr. Jenkins said that by confirming to him that the contents of the e-mail were correct, Mr. Albert was confirming to him that there was to be a “removal, from the delinquents list of Total Point Inc.’s loans or whatever you want to refer to them as.”

With respect to the Gordon Duncan situation, Mr. Jenkins was asked if Mr. Albert had added anything other than confirming the correctness of the content of the e-mail. He replied:

Just that it was correct, that they were not to be reported on or recognized in any manner; they were just to be treated as they were okay. Whether directly or by implication, that’s the message that I took from my conversation with Mr. Albert.

Mr. Jenkins said that the only contact he had had with Mr. Albert was the April telephone call

and the follow up call in May about the dates on which he said he had received his instructions from Ms. Duncan.

Mr. Jenkins was not privy to the conversations between Minister of Economic Development Duncan and Deputy Minister Albert. What he has told me about what went on between them is hearsay. That means that to carry out my assignment I must move to a review of Mr. Albert's evidence and that of all others, including Premier Duncan, who can shed light for me in determining what instructions, if any, the Premier, in her capacity as Minister of Economic Development, gave to Mr. Albert on the issues of "singling out" and "concealment". In the course of that review I will give attention to the evidence of thirteen of the fifteen witnesses who spoke under oath. Of the remaining two witnesses, I have already dealt with the evidence of Mr. Jenkins and I have concluded that Kenneth Taylor, presently Associate Deputy Minister of Education, did not give evidence that would assist with my assignment. Once I have completed my review, the remaining task will be to reach my conclusions on the issues of "singling out" and "concealment" and, in doing so, to identify the evidence that has lead me to reach those conclusions.

Before moving to that examination, it should be recorded that on April 7 Mr. Albert wrote to me about the subject under investigation. His letter was marked as Exhibit 10. He was prompted to do so by the circularization of the April 4 anonymous e-mail. He said he had received several calls from the Yukon media on the matter and had told them that he would contact me on this subject. In the letter he outlined his knowledge of both the "concealment" and "singling out" issues. Mr. Albert's position and views on these matters were extensively covered in my formal examination of him which I now turn to consider.

I note also that on May 25 Mr. Albert sent to me a copy of his notebook where he recorded instructions received by him and discussions of meetings he attended as Deputy Minister including those with the Minister of the Department in which he served.

6. REVIEW OF RELEVANT EVIDENCE OF THIRTEEN WITNESSES

(i) Maurice Albert

1. From January 1988 until October 1996 Mr. Albert was in the employ of the Yukon Government as President of the Yukon Housing Corporation. That position was considered to be at the Deputy Minister level. From October 1996 until September 2000 Mr. Albert served as Deputy Minister in the Department of Economic Development. When Premier Duncan assumed the portfolio of Minister of Economic Development on May 6, 2000 she became the Minister to whom the Deputy Minister reported.

2. Mr. Albert said that on a motor trip from Whitehorse to Dawson City and return in the third week of May, 2000 during which Ms. Duncan, her Principal Secretary Jason Cunning and Mr. Albert were present, the issue of the arrears of Mr. Jenkins' loans was raised. The collection procedures of the previous government were discussed and it was agreed that the policy would need to be revised so that the new government's intention to go after loans that were in arrears could be accommodated. Mr. Albert could not recall who had raised the matter of the Jenkins loans but with respect to the conversation that occurred on that occasion he said:

I do recall that the issue of the arrears for Mr. Jenkins were raised at that time and--and we discussed whether or not the, why the department had not done, taking aggressive collection procedures on this, and I explained the policy of the department at the time, which was obviously the policy of the previous government.

3. In subsequent days and weeks the Minister and her Deputy had a number of discussions about the collection of arrears of outstanding loans and at one point Mr. Albert committed to the Premier that the Department would rewrite or bring forward a new policy. The intent was that the policy would apply equally to all parties. Mr. Albert said that, as he recalled it, the drafting of a new recovery policy for arrears was his suggestion. Mr. Albert said that the Premier wanted an aggressive stance on Mr. Jenkins' loans in particular.

4. While Mr. Albert was definite that the Jenkins loan came up for discussion during the May motor trip he was not certain when the Gordon Duncan matter first came up in his discussions with the Premier. He said:

At one point in time, I did point out to the premier that her brother did have a -- an outstanding amount owed to the Yukon government and that in particular this would need to be resolved, but also that, you know, all loans outstanding would have to be

dealt with equally,...

5. At the time that the new Minister of Economic Development assumed office early in May, 2000 Mr. Albert was aware that she was the sister of Gordon Duncan, a part owner of Total Point Inc.

6. Mr. Albert said that neither Ms. Duncan, Kirk Cameron, Deputy Minister to the Executive Council, nor Debbie Hoffman, Chief of Staff in the Premier's office, at the time of the change of government and in the immediately following weeks, gave Mr. Albert any instructions about the need for the Premier to be kept at arm's length from her brother's business affairs. Mr. Albert said however:

I fully understand and understood, and still do, that the premier could not provide any kind of directions that would put any businesses that her brother was involved in into a preferential treatment. And as I mentioned, she's never--she never instructed me during the whole time that I worked for her not to--not to discuss the issues with her.

7. The following question was asked of Mr. Albert and he gave the indicated answer:

Q Did you see it as your responsibility to insulate her from any discussion involving her brother's business activities?

A Not--not at that--not at that point, no. I--you know, I viewed it as my responsibility to bring a resolution to this in such a fashion that she would not be able to be put into a position of being in conflict, okay, saw this as an area of transition, and we were working at it at the staff level, to try to reach--reach agreement. I did not--I did not brief the premier on what were our--our--you know, the actions that we were carrying on at the departmental level.

8. Mr. Albert said nobody notified him during his four months as Deputy Minister to Ms. Duncan, as Minister of Economic Development, that another Minister had been designated to handle all matters relating to the Minister's brother's business activities with the Department.

9. It was known to Mr. Albert prior to the election that Mr. Duncan's company, Total Point Inc., had not met all of its obligations to the government and Mr. Albert's focus was on reaching an agreement with Total Point Inc. on how the issue between the company and the government was going to be resolved. He was aware of the contribution agreement between the government and Total Point Inc. dated July 11, 1997 under which Total Point was to deliver twelve manufactured SAR Field Transmitter units to the government by the end of June, 1999 and that

that date had come and gone without full delivery having been made. Mr. Albert said his Ministry staff were working on the plan over the summer of 2000 to bring closure to the matter. He stated:

...we needed to have an agreement with Total Point of either how they would meet their obligation right then and there and deliver radios or an agreement of how they were going to go about to--to meet their obligations somewhere in the future. I mean, we were not, -- again, we were not about putting Total Point out of business, but we needed to have some form of agreement in place that says that, yes, the original agreement called for this, for the delivery of the units by this date, that date has been missed, but here's what we're doing instead. So something documented that would show the change in plans, a change of venue and that would become, if you wish, an amendment to the contract.

10. The Minister and Deputy Minister met to discuss departmental business at 11:00 a.m. on June 30, 2000. Mr. Albert says the Premier told him that "...the caucus was putting a lot of pressures (sic) on her to--to take--take aggressive collection actions against Mr. Jenkins, Mr. Jenkins's loans in particular". Mr. Albert said the Premier asked why it was taking so long to get the policy prepared. Mr. Albert said he emphasized the necessity of having a policy that was equitable and treated all those indebted to the government in the same way. He said the Minister wanted the dealing with Mr. Jenkins expedited but she understood that a strategy had to be created. He said she was not entirely happy with the way the matter was going but she left him some manoeuvrability, some time to get things in place. Mr. Albert recorded in his notebook: "Arrears - create a strategy - caucus versus Jenkins".

11. Mr. Albert said that at the 11 o'clock meeting he drew a parallel between Total Point and Mr. Jenkins - that a policy could not be written "that would not capture both of these loans as well as many others in the same net". He said the Premier never indicated she did not want an overall policy to capture all situations. He said she told him to "Go ahead and define policies. I want action taken quickly on Mr. Jenkins". He said that at the 11 o'clock meeting the Minister neither initiated any discussion about Total Point nor commented about it when he brought it up. She did not react when Mr. Albert brought Total Point into the conversation - she remained silent on that matter.

12. The Minister and the Deputy Minister met again on June 30 at 4:00 p.m. Mr. Albert said the Premier's demeanour was very different and there was something upsetting her. He said his approach was to deflect the Jenkins issue until a policy was in place but his sense was that this

was not going to happen because she wanted action taken on Jenkins. Mr. Albert said he again raised the issue of Total Point. For the second time that day the injection of Total Point into the conversation was by Mr. Albert. It was on his initiative, not that of Ms. Duncan, that Total Point came into the conversation at the 4:00 p.m. meeting. He said that when he raised Total Point Ms. Duncan responded that the company was not in arrears, it was not a loan and that she had better not see Total Point appear on any arrears report. Mr. Albert said the discussion was tense and he replied "If you don't want to see Total Point appear on an arrears report then you'd better not ask for an arrears report". He said that this was the first time the Premier had ever mentioned anything regarding Total Point and it was the first time she had ever reacted to anything he had said about Total Point. Mr. Albert said he was prompted on this occasion to raise the Total Point matter when the Premier brought up the issue of the arrears of Mr. Jenkins. He said he then raised Total Point in the context of equating "the necessity to have equal treatment".

Mr. Albert said that it was his sense that Total Point had been in arrears since June 30, 1999. He acknowledged that Total Point was not shown as being delinquent in either Exhibit 1 or Exhibit 2 which are the "delinquent loans over 90 days" lists dated respectively December 31, 1999 and June 30, 2000. To his knowledge Total Point had never been identified in an arrears report. He said Mr. Mather would be in a better position to explain why that was so. He said that it was his belief that Total Point was not a traditional loan - it was an agreement. He was asked whether it was a loan at all and he replied that it was not. He said Mr. Mather could explain the matter but as he understood it, this was not a loan where the government was expecting money but, rather, an agreement under which they were expecting radios to be delivered to another department of government. He said he never believed that there were any differences, with respect to meeting their obligations, between a delinquency on Mr. Jenkins part and a delinquency on the part of Total Point. Mr. Albert recorded in his notebook that there was discussion on loan arrears and that a collection plan was to be put in place. His notes then read: "TP (meaning Total Point) not a loan arrears. S/N/B (meaning should not be) on reports". Mr. Albert said that Ms. Duncan never gave him an indication that her interests in Mr. Jenkins' loans were because he was a Member of the Opposition. He said that in his mind that thought was ever present and he believed it to be unethical to target the Jenkins loans and to use "the power of her office to go

after a member of the opposition”. He said that to go after Mr. Jenkins was to go in a direction that was not correct.

13. Mr. Albert said he returned to his office at the conclusion of the 4:00 p.m. meeting on June

30. He said the Assistant Deputy Minister for Corporate Planning and Services, Janet Moodie,

was still in the office. He said he told her:

- (1) About Ms. Duncan’s comments about not having Total Point in an arrears report. He said Ms. Moodie’s response was that comments of that kind by Ms. Duncan would put her in a position of conflict.
- (2) He had been instructed to move on the Jenkins loan. He said he had previously given Ms. Moodie instructions to proceed with the preparation of a loans recovery policy and he emphasized on this occasion the need for getting it going as soon as possible.

He acknowledged that he had first received instructions from Ms. Duncan to prepare a loans recovery policy about May 18 which was the time of the motor trip to Dawson City.

14. Mr. Albert said he looked to Ms. Moodie and Mr. Mather to formulate the new policy. Progress was slow. He said the staff had many assignments to get the new government in place and they were short staffed over the summer. As a result, the arrears policy “while it was a priority for the Premier” simply slipped throughout the summer.

15. Mr. Albert said he gave no instructions to his staff over the summer to pursue the Jenkins loans. He acknowledged that up until September he ignored the Premier’s directive in that regard.

16. Mr. Albert said that on August 14 he had a meeting with Deputy Minister Cameron who was the Senior Deputy Minister and whose responsibility it was to chair meetings when Deputy Ministers met to discuss government business. Mr. Albert had missed a recent meeting of Deputy Ministers. He said that on this occasion Mr. Cameron had brought him up to date. Mr. Albert says he told Mr. Cameron of his frustration over the difficulty he was having obtaining meeting time with the Minister. During the discussion Mr. Albert says that Mr. Cameron told him that Premier Duncan wanted Michael Brandt fired. Mr. Brandt held the position of Director

of Trade and Investment in the Department of Economic Development. Mr. Albert said that the Premier had already raised that issue with him. Mr. Albert said that Mr. Cameron did not tell him why the Premier wanted Mr. Brandt dismissed. He said he recalled Mr. Cameron being very frustrated about the Premier and his comments about her were not flattering. He said Mr. Cameron described the Minister as a “one-issue Minister - the pipeline” and he recorded that comment in his notebook. He said Mr. Cameron thought Premier Duncan was not running her agenda as she was strictly focussing on the pipeline. He put a note in his book: “Pat wants Michael fired” . Mr. Albert said that Mr. Cameron was not in accord with the Premier’s view that Mr. Brandt should be fired and he was not instructing Mr. Albert to dismiss Mr. Brandt. He said Mr. Cameron told him it was his responsibility as the Deputy to stand between the Minister and the employees in the Department.

17. Mr. Albert said he met with the Premier on August 22. He said the government caucus had had a retreat and had generated more than one hundred areas of priority that caucus wanted prioritized. He said a lot of Deputy Ministers had received the list of items from their Ministers and that the Minister of Economic Development did not provide a copy so it was obtained from another Department. He said the Premier was specifically asked for a copy of the list during the meeting which was also attended by Ms. Moodie but the Premier refused to give the list to them. Rather, Mr. Albert records, that she said she had covered with them on that occasion the items that she wanted them to address. Mr. Albert said there were a lot of key items on the list that the Premier did not identify.

18. Mr. Albert left on vacation immediately after his August 22 meeting with the Premier. He returned on August 30 to attend a retreat planned for August 31 to be attended by government caucus members and Deputy Ministers. In preparing for that meeting Mr. Albert said he met with Ms. Moodie. He said he found her visibly upset over three items:

- (1) That the secondment agreement that was to send Brian Love from his position as Director of the Oil and Gas Resources Branch in the Department of Economic Development to Foothills Pipeline until March 2002 had gone off the rails and the Premier was very upset that that had occurred.
- (2) The Premier had met with Ms. Moodie and stated she wanted Michael Brandt fired.
- (3) The Premier had refused to sign a travel advance authorization for Mr. Albert’s

attendance in September at a conference of Energy and Mines Ministers in Toronto.

Mr. Albert said he raised the travel issue with the Premier on August 31 and it was quickly settled with approval given for his attendance at the meeting. He said he did not raise the Brandt matter because he knew the issue but when he raised the Love secondment with the Premier he said she denied that she had any concerns about it. He says she told him that it was something that had been raised by the Public Service Commission but it had been resolved.

19. Mr. Albert said that also on August 31 he had met with Jim Alstrom a member of the transition team, who was brought in to assist the government in the early days of its administration. Mr. Albert says Mr. Alstrom told him that there was an issue with the Premier over the Love secondment for which she seemed to hold Mr. Albert accountable and for which Mr. Albert had been blamed at a caucus meeting. He says Mr. Alstrom's term was that he was being "slagged" by the Premier on this issue. His notes record his meeting with Mr. Alstrom and that he had been blamed in caucus. Mr. Albert said he concluded that the Premier had told him a "white lie" when she said that the Brian Love secondment agreement was not an issue. He said "the Premier had not been honest with me" when he asked her about the Public Service Commission secondment agreement and this was the first time that it had crossed his mind that maybe his tenure with the Yukon Government was going to be short.

20. On September 1 Mr. Albert flew to Montreal to resume his vacation and before returning to Whitehorse on September 14 he attended the meeting of Energy and Mines Ministers in Toronto on Monday and Tuesday, September 11 and 12. Mr. Love was also present. The Premier had meetings in Ottawa on September 11 and flew to Toronto in the early evening of that day. During the evening the Premier met in an informal setting with her officials who had attended the Ministers' meeting on September 11 and they briefed her on what had occurred. Mr. Albert and the Premier had discussions but Mr. Albert says that nothing was discussed between them on either the Jenkins loan matter nor the Total Point Inc. situation. After the briefing session Mr. Albert said that "Brian Love had asked to meet with me". He said a meeting between the two of them took place in Mr. Albert's hotel room.

21. Mr. Albert acknowledged that while out of the Yukon Territory he had, on September 7,

e-mailed a message to Ms. Moodie (Exhibit 4) in the following form:

Janet.Moodie
From: Maurice.Albert
Sent: Thursday, September 07, 2000 11:56 AM
To: Janet.Moodie
Subject: Arrears Policy

After our conversation last night, I believe that we need to put the collection of the Jenkin loan on a fast track. You are correct that we cannot super manage all issues and this is one case where I'm doing just that. Pat want (sic) the loan collection to be undertaken ASAP. It was my idea to do the policy work first, however we need to move forward. At my last meeting with her she was quite frustrated with the delays on this issue. You are correct that Val does understand what I'm looking for so we have better give the Minister what she is looking for and work on the policy at the same time. Can you please get Doug to take immediate action on this loan.

Thanks.

Mr. Albert was asked if the e-mail was sent at the time of the Toronto meeting and he responded in the affirmative. He elaborated on the e-mail:

Q I guess my question is, what prompted the sending of that E-mail to Janet Moodie?

A My recollection of this was--and, I mean, the meeting with Brian Love where Brian--Brian told me that he had had a discussion with, with the premier, and that the premier was very upset about a number of issues and including the Jenkins loan and--the Public Service Commission agreement and all of this. And as a result of this, my recollection is that I fired off an E-mail to Janet, or that I had put in a call to--my recollection is I called and left a voice-mail for--for--for Mather, Val Mather, to get the documents ready, and--and that Janet and I had discussed this.

Q So it was your conversation with Love --

A Mm-hm.

Q --that prompted this?

A My recollection, yeah.

Q And what did Love say to you about the--about the Jenkins loan?

A That the premier was upset that no collection action had been taken on this. I mean, you need to understand that part--what Love told me also was that he told me I was going to be fired, and--

Q He told you that in Toronto?

A Yeah, yeah. You know, Love told me that I had--that he asked me if I had any long-term plans for the job and all of this. When I pushed him out on it, he refused to

get into any kind of details. The day that I got dismissed he called me and told me that effectively he was giving me heads up, that he had been told the week before that I was being dismissed, and there was also a gentleman from Calgary that was aware that I was being dismissed.

Mr. Albert said that Mr. Love had not told him he was going to be dismissed "...in so many words. Just asked me if I had any long-term plans for my job". Mr. Albert said that the reference in the e-mail that "Pat want (sic) the loan collection to be undertaken ASAP" would have been put in the document as a result of his discussion with Mr. Love.

Mr. Albert was asked whether the matter did move forward against Jenkins as a result of the e-mail:

No, Janet, the--Janet had a meeting or discussion with--with staff at the premier's office, and I--I don't know who, who it is, but her, her advice was that, you know, we should hold back on this. and when I came back, I had a meeting with the premier, and she did tell me to--to cease and desist on the loan arrears.

Mr. Albert also said that up to that point in time (mid September) he had not done anything more about getting Total Point Inc. listed on the arrears statement.

22. Mr. Albert's meeting with the Premier was on September 18 and her Executive Assistant, Keith Halliday was also present. As a follow up to that meeting Mr. Albert e-mailed to Mr. Halliday a one page document (Exhibit 5) entitled "Deliverables from meeting on September 18". Twelve items were listed. Number 10 reads:

10 - **Loan Arrears:** Prepare a loan policy and submit to Management Board (Sept 15).

That was the only listed item having relevance to this investigation. With respect to this meeting, Mr. Albert recorded in his notes:

Loan Arrears - Policy for arrears
- Management Board Agenda
- Hold on Jenkins

Mr. Albert acknowledged that he had not included in item number 10 of Exhibit 5 the additional piece recorded in his notes about Jenkins.

Later in the same week Mr. Albert and Mr. Halliday reviewed Exhibit 5 and some changes were

made including the change of the September 15 date to September 22 since the 15th of the month had passed. Mr. Albert acknowledged that while he had received instructions from the Premier four months previously to get a defined policy for collecting outstanding loans it had not come to any kind of fruition by September 18.

23. On September 25 Mr. Albert was requested to come to the Premier's office. Mr. Halliday was present. He said the Premier told him that she did not think that he would fit with her agenda and that he was being dismissed. He was told to contact the Public Service Commission to make severance arrangements.

(ii) Jason Cunning

1. Mr. Cunning commenced work in the Liberal Caucus office in January, 1997 and when the Liberal Party moved to government in 2000 Mr. Cunning became Principal Secretary, a position he described as "political advisor to the Premier".

2. During the May, 2000 motor trip to Dawson City a number of items of ministry business were discussed. One subject for discussion was the lack of a loans collection policy. Mr. Cunning said that Premier Duncan raised the issue. The way loans were collected seemed very haphazard. He said that prior to the year 2000, as an opposition party, Members of the Liberal Caucus would annually receive a list of delinquent loans under various government programs.

3. A loans collection policy was a priority for the Premier. He said of the Premier's participation in the discussion during the May 18 trip:

_____ She said that she wanted the department to work on a loans collection policy, because it was haphazard and there were people who were not paying back their loans. And there was a long list of them, which she was familiar with from Opposition as well.

4. Mr. Cunning said that Mr. Albert's reaction to the Premier's direction was "Good, that will be a way that we can get Peter" referring to Mr. Jenkins who was described by Mr. Albert, according to Mr. Cunning, as one of the Premier's "political opponents" whose name was on the delinquency list.

5. Mr. Cunning said that he was the one who responded to Mr. Albert's observation:

I said, No, that's not what this is about. This is about a blanket policy where we can get everybody...we want everybody to pay their bills back.”.

Mr. Cunning said that in responding to Mr. Albert in that way he was speaking for the Premier. He did not think that the Premier made a response to Mr. Albert's observation about “getting” Peter.

6. As Principal Secretary, Mr. Cunning attended government caucus meetings. He did not recall a loans recovery policy being discussed at caucus but he said people discussed various loans including Mr. Jenkins' indebtedness. When asked the context in which Mr. Jenkins' loans would be discussed, he responded:

Peter would raise issues in the Legislature, about government accountability and, you know fiscal--fiscal policy and stuff like that, and then people would mock the fact that he was so concerned about the government spending, you know, a hundred dollars or a thousand dollars on something, while, at the same time, he could be carrying an outstanding loan of over a hundred thousand to the government. Like, it seemed sort of nonsensical that he could carry those two views at once.

7. Mr. Cunning said he was not aware of any directive, in caucus or otherwise, that Mr. Jenkins' loans were to be singled out for recovery as distinct from all other outstanding loans. He said he had never heard the Premier give any such direction.

8. Mr. Cunning said that it was not the government's intention to go after just one person. He said the government's intention was the complete opposite to Mr. Albert's allegation that the caucus and the Premier as a part of it wanted Mr. Jenkins loans singled out for immediate recovery. Of such a suggestion, Mr. Cunning said:

From a political standpoint, that would be--and that's what I'm paid to worry about--that would be impossible to defend. It would also be wrong. So, for those two reasons, I mean, I specifically said to him, no, that's not why we want to do this. So that was early in the mandate.

9. Mr. Cunning said that neither on the Dawson City trip nor at any other time did he hear any discussion between the Premier and Mr. Albert about the contractual arrangement between Total Point Inc. and the government. Mr. Cunning said he had no involvement in the Total Point issue.

(iii) Kirk Cameron

1. Mr. Cameron said that, as Deputy Minister of the Executive Council, his principal responsibility is to serve the Premier in her role as President of the Executive Council and as Cabinet Secretary to support her full ministry by providing a conduit between the Premier's office and the departments of government on the expectations of the government in delivering policy and legislation to the executive of government.

2. Mr. Cameron chaired regular meetings of Deputy Ministers. He said he did not recall any specific discussion at those meetings on the subject of conflict of interest and the responsibility of Deputy Ministers to see their Ministers avoid conflict situations, nor did he recall any specific conversation with Mr. Albert on that subject. He said he assumed that Deputy Ministers come to their positions with a "given" that they had the responsibility to ensure that conflict issues did not arise with respect to their Minister. He said:

Yes, if there's a perception that the minister has clearly identifiable interests in the community of the Yukon--It's a fairly small world here in the Yukon Territory. If a deputy is aware of something that could pose a conflict to his or her minister, I would suggest it's that individual's responsibility to make sure that the minister is advised if there is a perception that a conflict could arise.

3. Mr. Cameron said that within the first two weeks of assuming office in May of 2000 he was asked specifically by the Premier to provide a buffer between her, in her role as President of the Executive Council, and with respect to any business before Cabinet that dealt with business activities of her brother. He said he examines very carefully all agendas of Cabinet and Management Board (a subcommittee of Cabinet) to ensure that the Premier removes herself from situations that could involve a conflict for her. In his evidence Mr. Cameron cited three occasions where he took steps to ensure that the Premier absented herself while specific discussions occurred. He said on all occasions the Premier had cooperated fully.

4. Mr. Cameron had no involvement whatever with respect to the contribution agreement between Total Point Inc. and the government nor was he ever involved at any time with anything relating to the indebtedness of Mr. Jenkins' company to the government.

5. Mr. Cameron recalled a meeting on or about August 14 with Mr. Albert when he brought to

Mr. Albert's attention some dissatisfaction with an employee in his Department that had been brought to his attention by the Premier. Mr. Cameron did not know the employee personally but when the name Michael Brandt was put to him during questioning he agreed that Mr. Brandt was the employee involved. Mr. Cameron said the Premier's concerns related to public representations about government policy on economic matters. The following records Mr. Cameron's evidence and his discussion with Mr. Albert on this matter:

Q So what did you do about that, when you met with Mr. Albert?

A I expressed that this was a concern; that he should talk to Mr. Brandt about being discreet about the way in which he undertook to communicate with these highly influential and important public groups about government policy and government positions.

Q Did you express any disciplinary action that Mr. Albert should take against the employee?

A None whatsoever. Not disciplinary action. As far as I was concerned, I felt it necessary that he bring that to Mr. Brandt's attention, and ask Mr. Brandt to cease those kinds of discussions.

Q Was there any suggestion that, as a result of this, that Brandt's job was at risk?

A No. I do not believe that, in any way, I intimated to him, or--and, clearly, I did not specifically state that Mr. Brandt should be fired or in any way be disciplined. That that, frankly, as far as I'm concerned, is Mr. Albert's responsibility. I wanted to bring that to his attention, that there were matters of indiscretion that he should be aware of, by one of his senior officials.

Q But did you imply that there shouldn't be a place for Brandt in the continuing staff in the department?

A No, I did not.

6. Mr. Cameron was asked if he had expressed to Mr. Albert frustrations on his part in dealing with the Premier as a one issue minister focussing solely on the pipeline. Mr. Cameron said there was no doubt that in the early days of the administration the Premier was extremely focussed on the pipeline and he said he would have discussed that with Mr. Albert. The pipeline was the Premier's highest priority. About his discussions with Mr. Albert, Mr. Cameron said:

...to me, Maurice Albert was my colleague, a long-time public servant, and also a deputy within this government. Are there frank exchanges on a frequent basis, with other deputy ministers, about the business before government? By all means, there--yes, there certainly are. And perhaps, in the context of one of those frank exchanges about priorities, about frustrations of meeting the agenda, about the early days of an administration, it could have been misread that, somehow, I was being critical of the

Premier. But if it was misread that way, the intent was misunderstood; the intent being, how do we work as deputies, in the deputies community, to ensure that the government of the day gets our full attention and respect in trying to move their agenda? That's always been my position.

...

So, perhaps in the context of speaking my mind about issues important to the government, Mr. Albert may have read that as me being critical of the Premier. But the intention would have been to try to improve our performance, to ensure that they were well supported. That's always been my goal.

...

It's our responsibility, as deputies, as I see it, to assess the nature of our relationship to our political masters. They've been elected, through the democratic principles that underscore our governing system, to run government, to be the decision makers. We are their principal advisors and the individuals who are most able and most trusted to fulfill the objectives that they wish to proceed with as government. That requires us, as deputy ministers, to exchange views, frank and full views, which, you know, from time to time, can mean, how do we work better to try to focus our ministers' and our premier's attention in areas that would best serve the government. Now, in the context of the discussion with Albert, that kind of frank exchange probably took place. It is certainly taking place on numerous occasions, with other deputy ministers around the system, because, frankly, I see that that is the deputies' and my role in the organization, to ensure that we understand the context in which we work, and we understand it well. And sometimes that means that we're talking about the relationship between various ministers, between the ministers and the Premier. These are critical parts of the work that we have before us. Unfortunately, if Mr. Albert has misread some of my comments as somehow being critical of the Premier, then he misunderstands my intentions and my underlying views of what it is to be a public servant in this organization. I guess, at the outset, I took it that the deputies' community was just that; it was a community of individuals with a first line interest in ensuring that the government was well served. And to me, that leaves the opportunity for us to share, frankly, our views about how things are going, and the performance of all aspects of the organization, including our relationship with our respective ministers. Because, by sharing those views, perhaps we can learn from each other on ways in which to do it more effectively. And, again, that's part of the job as far as I'm concerned, and it was in that spirit that I would have interacted with Maurice Albert, as I did with every other deputy who has been in the system since I started. So I guess those are the kind of additional comments I'd like to make.

(iv) **Keith Halliday**

1. Mr. Halliday assumed his duties as Executive Assistant to the Premier in late August, 2000. His contact with Deputy Minister Albert was minimal considering Mr. Albert's absence from Whitehorse in late August and early September and his departure from government service on September 25.

2. Early in his employment Mr. Halliday was instructed to move forward a loans recovery policy for approval that he understood the Premier, prior to his arrival, had instructed the Department of Economic Development to prepare. He was in contact with Acting Deputy Minister Janet Moodie to be sure that what he called “a comprehensive and transparent policy” was prepared for presentation to Management Board and Cabinet that would “be applied in a fair and open way”.

3. Mr. Halliday said that in his discussions with Ms. Moodie the question arose whether the Jenkins’ loans deserved special treatment. It is his belief that Ms. Moodie raised the Jenkins matter with him. He said he told her that those loans were not to be treated in a special way and that the loans policy the department developed was to be designed to treat everyone the same. He said he told Ms. Moodie in the first ten or so days of September, very clearly, “that it was not to be a vindictive policy; it was to be an open and transparent framework for all the loans to be dealt with in a sensible way”.

4. Mr. Halliday confirmed the correctness of point number 10 in Mr. Albert’s memorandum of September 20 (Exhibit 5) that the instructions at the September 18 meeting, attended by the Premier, Mr. Halliday and Mr. Albert, were to “Prepare a loan arrears policy and submit to Management Board”. He said it was “not to be a vindictive approach to Mr. Jenkins’ loan”. He also said that at the meeting on September 18 the Premier expressed her unhappiness that little progress had been made on the instructions she had previously given.

5. Mr. Halliday explained that the notes in “red” on Exhibit 5 were made at the time of discussing the document with Mr. Albert after its receipt and the notes in “blue” were made at a subsequent meeting he had with Ms. Moodie to discuss additional matters that should be added to the twelve points listed on Exhibit 5.

6. Mr. Halliday said he could not recall whether the Jenkins loans had come up for consideration at the September 18 meeting. He said “it may have”. He said he was quite sure the Premier told Mr. Albert it was to be a broad and transparent approach involving all outstanding loans. He said he had never heard the Premier talk of singling out Mr. Jenkins’ loans for specific and separate

action. He said his understanding was that the Jenkins loans were to be treated within the policy framework as all the other loans were. Mr. Halliday was asked whether, at the meeting on September 18, the Premier had countermanded any order she might have previously given to Mr.

Albert to pursue Jenkins as a separate item. He replied:

I agree that she gave no instructions that I took to be a countermanding of a previous instruction. That is, I had no hint that there had been any previous instructions for a particular action.

7. Mr. Halliday said that Mr. Albert's commitment to have the loans policy ready, as recorded by the date on Exhibit 5 opposite the Loans Arrears item number 10, was September 22 but it was not ready by that date.

8. Mr. Halliday acknowledged that the new policy ultimately went forward to Management Board bearing the recommendation of Deputy Minister Angus Robertson dated March 17, 2001 and the approval of Economic Development Minister Duncan on March 20, 2001.

9. Mr. Halliday said that during the time that Mr. Albert held the position of Deputy Minister in the Department of Economic Development, he had no knowledge of the 1997 contribution agreement between the government and Total Point Inc. He agreed he was not privy or party to any discussion with either Mr. Albert or the Premier about the subject of Total Point's business relationship with government until after September 25. He said that once the Total Point matter became a media item he became aware of it but he did not know anything about the particular Total Point Contribution Agreement.

10. Mr. Halliday said he did not have specific responsibility for conflict of interest matters but once the allegations came out in April he made it his business to read all of the correspondence and to make sure he understood the rules fully. He gave the following explanation of "how we were running things in the office":

If matters related to telecommunications, for example, came up on cabinet or caucus retreat, we would insure that the Premier excused herself from that part of the meeting, and that her briefing book, for example, did not include documents on those topics.

Q And were there occasions, then, when she would withdraw if any of her brother's business activities were on the agenda?

A Yes, that did occur.

Q And it occurred where, at Cabinet?

A It occurred both at Cabinet, and I believe also at one of the caucus retreats.

11. Mr. Halliday was present at the September 25 meeting when Mr. Albert was dismissed as Deputy Minister of the Department of Economic Development and from the public service of Yukon. His recollection of the brief meeting was in accord with the evidence given relating to that event by Mr. Albert and Ms. Duncan.

(v) **Brian Love**

1. Mr. Love's employment with the Government of Yukon commenced in January, 1985. At the time of his secondment to Foothills Pipeline in October 2000 his position in the Department of Economic Development was that of Director of the Oil and Gas Resources Branch.

2. Mr. Love had no involvement in loans made by the Department of Economic Development to businesses in Yukon - neither with respect to the making of loans nor the collection of them.

3. Mr. Love was present at the meeting of Ministers of Energy and Mines in Toronto in September, 2000. On the evening of the first day of the meeting he participated in briefing Premier Duncan on the events of that day.

4. Mr. Love was asked whether, once the briefing session was concluded that evening, he had any further meeting that night. He gave the following answer to that question:

A Yes, I received a call from Maurice Albert, and I went up to his room later that evening and had a discussion with Maurice.

Q And he had invited you to come to his room, is that correct?

A Yes, he had.

Mr. Love agreed that he had accepted Mr. Albert's invitation to come to his room. Mr. Love reported to Mr. Albert as his Deputy Minister and he said that he had a very good working relationship with Maurice. He said that they had travelled together over the years and it was not

unusual for them to have a “nightcap” before they retired.

5. Mr. Love’s assessment of “why” he had been asked up to Mr. Albert’s room was, besides the opportunity to socialize over a nightcap, to give Mr. Albert the opportunity to make sure he had not missed anything in the briefing that Mr. Love had given to the Minister.

6. Mr. Love was asked separate and specific questions about whether he had had discussions at any time with Premier Duncan and with Mr. Albert about the business affairs of Total Point Inc. with the government and the outstanding Jenkins loans. The five questions addressing these matters and the responses of Mr. Love to them are as follows:

Q Now, I really just have two or three questions I want to ask you. The first one is this: Did you that evening, or had you ever before or since, discussed with the Minister, who in this case was the Premier, one, her brother’s business involvement with the Department of Economic Development through his company Total Point Inc.; and/or, two, the indebtedness of Dawson City Hotels, companies in which Mr. Jenkins, M.L.A., has an interest to the Government of the Yukon on any outstanding loans?

A No.

Q You had no discussion with the Premier at any time on those subjects?

A Never.

Q Did you that evening, or have you ever before or since that evening, discussed with Mr. Albert, the Deputy Minister, either or both of, one, Total Point Inc.’s business involvement with the Department of Economic Development, that being the Minister’s brother’s business and/or, two, the indebtedness of Dawson City Hotels, Mr. Jenkins’ companies, to the Government of the Yukon under outstanding loans?

A This is a little greyer. I would say no, never directly related to those two specific loan matters. The only time is subsequent to me joining Foothills, I had supper with Maurice, I’m trying to think, it was probably in the summer of this year; and he mentioned to me that this inquiry was underway and what the topic of the day was, very generally, and said that of course, he wasn’t able to talk about it. And I said, “Well, it doesn’t pertain to me anyway, so frankly, why don’t we talk about something else.” I mean, it was a social evening.

Q Yes.

A So, other than that, very indirect; but it was never specific to any particular loan. It was just the issue of this particular hearing.

Q So, I think I’m hearing you tell me that there was no discussion that night, or before or since, with either the Premier or with the Deputy Minister about the

immediate calling-in and taking action to collect on the Dawson City Hotels loans that had been made by the Department of Economic Development to the hotel company?

A That is correct.

(vi) **Janet Moodie**

1. Ms. Moodie has been in the Yukon Government public service since 1987. Since January, 1998 she has been Assistant Deputy Minister for Corporate Planning and Services in the Department of Economic Development. From late September, 2000 until early December in that year, she was the Acting Deputy Minister of the Department.

2. Ms. Moodie said that prior to May, 2000 there was no written loan recovery or repayment enforcement policy in place. She said overdue loans were dealt with on a case by case basis. She also said that the Department often received requests for loans to be written off or forgiven and she said those requests are dealt with under a Management Board Directive which sets out conditions under which loans could be written off or forgiven. She said the forgiving or writing off of a loan could occur when there is no hope of recovery or where recovery would cause an unreasonable hardship but it would be a Management Board decision whether that would occur, decided by the Board on a case by case basis. She said recommendations from the Department to the Management Board for forgiveness are not frequent because there has to be an ability by the Department to demonstrate that there is no reasonable hope of any recovery.

3. Ms. Moodie said that at a Departmental Management meeting on July 4 Mr. Albert advised those present "That the Premier was interested in having a policy on how we could reasonably collect the loans that were outstanding to Government" and it was the Department's responsibility to put an arrears or delinquent loans recovery policy in place. She confirmed that Exhibit 20 was the delinquent loans policy that the Department recommended to Management Board to help address outstanding loans. She acknowledged participating in the preparation of that document. That is the document recommended by Deputy Minister Robertson on March 17, 2001 and approved by Minister Duncan on March 20, 2001. She also confirmed that Exhibit 21 dated April 21, 2001 is an extract of the minutes from a Management Board meeting which constitutes the decisions that Management Board had made on the submission to it and the

instructions that went back to the Department for implementation.

4. Ms. Moodie said she was aware that the current investigation has two prongs - firstly, the Jenkins loans and, secondly, ramifications that flowed from the contribution agreement between the government and Total Point Inc. The following questions were then asked of Ms. Moodie and her answers are recorded:

Q Now, did there come a time when you became aware that those were two issues within the Department to be considered?

A Yes, I was certainly aware that those issues existed. I did not believe that they were linked.

Q And did Mr. Albert, at any time, give you an indication of either of those or both of them being issues that should be attended to?

A We talked about the arrears policy. I don't think that was specific to Mr. Jenkins. That was one assignment. I don't recall conversations with Maurice with respect to the resolution of the contribution agreement.

5. Ms. Moodie acknowledged receiving the e-mail addressed to her from Mr. Albert dated September 7 entitled "Arrears Policy" (Exhibit 4). She said that Mr. Albert was out of town when he sent it and she acknowledged having talked to him on the telephone the evening before. She said she would have seen the e-mail when she came in to the office the next morning. She said that prior to the e-mail she had not had any indication from Mr. Albert or anyone else that he was under instructions from the Premier to proceed with the collection of the Jenkins loans. She was asked:

Q That was the first occasion?

A Yes, we had always talked about the larger issue, which was the outstanding loans; and I don't recall any occasion where that was tied specifically to Mr. Jenkins.

Q Until you received this e-mail?

A Until I received this.

She said the reference in the e-mail to the "Jenkin loan" came as a surprise to her. She said she did not recall that the conversation the evening before had dealt with that specific matter but, rather, she recalled the telephone discussion being about the difficulty in trying to get a loans policy pulled together.

6. Ms. Moodie said that after receiving the e-mail she talked about it with Val Mather and that she raised the issue with Keith Halliday, the Premier's Executive Assistant. She said she told Mr. Halliday about the directive that she had received from Mr. Albert and Mr. Halliday responded to the effect "That's not at all what was to happen" and he said that we were to focus on the loan picture as a whole. She said as a result of that conversation she did not take any other steps on the Jenkins matter. She advised Mr. Mather of the subsequent instructions given by Mr. Halliday. She said that when Mr. Albert returned to Whitehorse she told him of the instructions she had received from Mr. Halliday about the Jenkins matter.

7. Ms. Moodie was asked if she could contribute any further assistance to the investigation of the allegation by Mr. Jenkins that under ministerial direction there was to be a "singling out" of his loans for recovery by the Department while other loans were not targeted for recovery at that time. Ms. Moodie replied:

I don't think so, Mr. Hughes. I mean, it was certainly not my understanding that there was any effort to single out Mr. Jenkins. I mean, certainly his loan was well known, I think publicly, because there had been a couple of media stories on outstanding loans; and given his position in the community, he was inevitably one person who was mentioned.

8. Ms. Moodie said she was not familiar with the details of the contribution agreement between the government and Total Point Inc. She said she knew there was an outstanding matter but did not recall any specific discussion about it with Mr. Albert. She said there was no discussion that "we were going to show or not show contribution agreements that we had with companies" on the arrears statement documents that were issued from time to time by the Department. She repeated that she was aware of the contribution agreement and that provisions of it were outstanding but she went on to say "I'm not aware of any circumstances under which directions were provided or given with respect to it"

9. Ms. Moodie said she recalled the August 22 meeting when she and Mr. Albert met with the Premier. She recalled that there was a list of the commitments made in the new government's election platform and discussion at that meeting about which matters were priorities. She did not recall any resistance from the Premier to providing the list. She said there was a concern that it not be widely circulated because people might read something into the ordering of the individual priorities. She said she received the list from the Premier's office a few days subsequent to the

meeting but she acknowledged that she also had a copy of it from one of her colleagues in another ministry so they really ended up with two copies of it.

10. Ms. Moodie recalled Mr. Albert's return to Whitehorse on August 30 and she met with him that day to brief him on matters that had arisen in his absence and with information she thought he should have before the retreat he was to attend the following day involving government caucus members and Deputy Ministers. She said she brought to his attention concerns in the public service and the Premier's office that the Love secondment agreement had not been handled well. She also said she advised Mr. Albert that the Premier was surprised that he was planning to attend the Toronto meeting. She said that there was no discussion on that occasion about concerns the Premier had about Mr. Brandt. Ms. Moodie said that earlier in the summer the Premier had expressed concerns in that regard and she had passed that information on to Mr. Albert at the time.

(vii) Val Mather

1. Mr. Mather who, as Director of Corporate Services in the Department of Economic Development, held responsibility for loan collection, explained the Management Board Directive referred to by Ms. Moodie. A copy of it was entered as Exhibit 23. He said it covered both write offs and forgiveness. He explained that with a write off the right to collect a debt in the future is not extinguished whereas when a loan has been forgiven there is extinguishment. He explained the key role assigned to Management Board in both situations. He said that when the new government came in, its members wanted a rational, coordinated policy statement of loan collection on which to pursue loans and new measures that could be taken to make collection. Mr. Mather said he had a hand in the preparation of the policy that was presented to Management Board (Exhibit 20) but he said it was essentially the work of Ms. Moodie. He said the new policy gives the loan collectors one more option and that is to secure independent assessments as to what course of action should be taken to resolve the outstanding loan issue.

2. Mr. Mather said that in early September he received a telephone call from Mr. Albert while the latter was in Ottawa. In the call Mr. Mather was instructed to take legal action to collect the Dawson City Hotels loans. He said the time of the phone call corresponded with the September

7 date of the e-mail from Mr. Albert to Ms. Moodie (Exhibit 4). Mr. Mather said he was surprised that Mr. Albert would telephone from out of town with these instructions. He then explained as follows:

I mean, there was a lot of, I think, interest and anxiety to get collection on this loan, but we didn't want to do it without--we didn't want to do it on an individual basis without dealing with all loans in the same manner.

Q Well, where did that interest and anxiety of which you speak come from?

A Oh, that would be through the D.M.

Q Through Mr. Albert?

A Yes.

Q Well, prior to the phone call on the 7th of September, had he discussed this particular loan with you?

A There would have been comments made about it. We never got down as to what actually to do. It was always, "We've got to get that loan policy in place, and then, we'll take action."

Q Take action with respect to whom?

A To all loans.

3. Further questions were asked of Mr. Mather on this subject and what he said is recorded in the following dialogue:

Q Do you know what prompted that call from Mr. Albert?

A No, not really.

Q Now, you say "not really." Does that lead me to believe that you have some idea?

A Oh, I mean I think there was pressure to get the loans policy out so that we could take action. We wanted to be consistent with all loans, but I think the pressure was this loan in particular.

Q Well, was any pressure ever put on you?

A No, no. Comments were made, but I wouldn't react to them.

Q Comments were made by whom?

A I just know after one session in the House, some of the politicians said, "When are we going to collect those loans?" And I said, "Well, we've got to get a loan policy and the authority," and that's all. I can't remember which politician, but it was after a debate in the House with Peter Jenkins. And I just know that Maurice

was under pressure to get this policy out so that we could get going.

4. Mr. Mather said he never took the action directed by Mr. Albert because he talked to Ms. Moodie and she told him that she had talked to Mr. Halliday about the matter and she “told me not to proceed”.

5. Mr. Mather said he had no involvement in the negotiation of the July, 1997 agreement between the government and Total Point Inc. but he was requested to make the financial arrangements so that the payment of the \$150,000 provided for in the agreement could be made to the company.

6. Mr. Mather said his next involvement in the Total Point matter was in the summer of 2000 when Mr. Albert turned over to him the responsibility to make sure this agreement was satisfied. He said Mr. Albert told him at a short meeting in Mr. Albert’s office that he wanted him to “...deal with Total Point to get satisfaction and resolution of the outstanding transmitters”. He said he does not believe that he knew at the time that there were transmitters that had not been delivered. While delivery had been made of eight transmitters required by September 30, 1997, many of the twelve field unit transmitters that were to be delivered by June 30, 1999 had not been made. Mr. Mather said it was a contribution agreement and because contribution agreements are for giving out money he did not see many avenues open for collecting back money from Total Point. As to the nature of the transaction, Mr. Mather gave the following evidence:

Q Well, was it a loan that had been made?

A No, it wasn’t a loan. It was a contribution.

Q Well, if indeed there were transmitters not delivered, pursuant to the contract, would a record of that show up on the type of documents that we’ve marked as Exhibits 1 and 2?

A No, no, we don’t consider that a loan.

Q So, if there had been some undelivered units, --

A That’s right.

Q --they wouldn’t show up on the arrears statement?

A No, no. It was not a loan. It’s a contribution. The phrase says “This is a non-repayable contribution.”

7. Mr. Mather said he set about learning more about the agreement with Total Point and it was not until October, 2000 he took steps to set up a meeting with the company “about satisfying the contribution agreement”. Discussions were held with Mr. Duncan and those discussions included a representative of the Department of Community Services and Transportation which was the Department to which the units were to be delivered. Mr. Mather acknowledged that he was endeavouring to negotiate some kind of a delivery. While some delivery had been made under the agreement, Mr. Mather said the Department of Community Services and Transportation no longer could use, or did not need, what was contemplated in the 1997 agreement. He said the approach in the discussions was to have delivered what the Department of Community Services and Transportation needed and then discussions would go from there as to what is left after that. He said Total Point verbally assured the Department of Economic Development that they would honour the agreement but he said that in the discussions it was sometimes hard to get a definite answer from them. He said those discussions extended from approximately November 2000 into January 2001. Mr. Mather expanded on the detail of the discussions and negotiations and he said that in early 2001 he left the matter for resolution with the new Deputy Minister, Angus Robertson. As Mr. Mather understood it when he talked with me in October “it’s not concluded in my mind”.

(viii) Premier Duncan

1. Premier Duncan was first elected to the Yukon Legislative Assembly in a general election held on September 30, 1996. She was re-elected in the general election of April 17, 2000. During her first term she was an opposition member. She was sworn in as Premier on May 6, 2000.

2. Following her swearing in Ms. Duncan had immediate contact with me in my capacity as Commissioner of Conflict of Interest under the *Conflict of Interest (Members and Ministers) Act*. The following questions and answers by Ms. Duncan explains the nature of that contact and what resulted from it:

Q Right. Now, following your election, one of your first undertakings was, I believe, to meet with me, in my capacity as Commissioner of Conflict of Interest, under the *Conflict of Interest (Members and Ministers) Act*, for the Yukon?

A That’s correct. And, actually, what I did, because, rather than write out all of the situations, and so on, that my family’s--my brother’s business is involved in, I asked that he attend the meeting with you as well, as well as my husband Daryl,

who's employed by one of those business interests. And I did that because of the seriousness with which I take the conflict of interest legislation and the *Conflict of Interest Act*...

Q ...My belief is that I met with you and your family members on May the 15th, 2000.

A That would be correct, yes.

Q And your purpose in arranging that meeting with me was as you've just outlined, I take it?

A That is correct. And as I recall, Gordon also--my brother, Gordon Duncan, also met with you separately, as well as when I was in attendance.

Q That is, you say I met with you and your husband and your brother; and then had a subsequent meeting with your brother alone, as you recall it?

A That's as I recall it, yes.

Q And would it be correct that, having understood from my meeting with you what it was you wanted by way of advice, that I, at my initiative, agreed to draft a letter for you to sign, which would ask me the questions that I felt you needed answered in order to get the compliance with the statute that you indicated you most definitely wanted?

A That's correct.

Q And as a result of that, you wrote a letter to me, which has been marked in these proceedings as Exhibit 17, under date of May 23rd, 2000; is that correct?

A Yes, this is the letter.

...

Q And then there is a letter, here, that has been marked as Exhibit 16, which purports to be from me, to you, dated May the 25th, 2000. Would you tell me whether you received the original of that letter?

A Yes. Yes, I did. Yes. That's the letter.

Ms. Duncan's letter of May 23 (Exhibit 17) is attached as Appendix V. My reply of May 25 (Exhibit 16) is attached as Appendix VI.

Ms. Duncan said there was information about her brother's business interests that she learned about for the first time when she read the letter I had drafted for her to sign. She agreed that that would be information given to me by Gordon Duncan when I met separately with him after I had met jointly with Ms. Duncan, her husband and her brother.

In answer to a question whether she had adhered to the first piece of advice given to her on page 3 of Appendix VI, Ms. Duncan replied:

Yes, I have. I have--on any situation that involves communications, I have walked away from a discussion, if it's a hallway discussion, or absented myself. All of our members are certainly well aware of my disassociating myself from any discussions around communications.

In answer to a question whether she had adhered to the second piece of advice given to her, also on page 3 of Appendix VI, Ms. Duncan replied:

Upon her election in Opposition, as Leader of the Party I indicated to Pam Buckway that I would like her to deal with communications issues. At the time, government was considering entering into the Connect Yukon, which is a communications type endeavour. So I asked Pam, at that time, to delve into that issue because, of course, she's very familiar with communications, being a former broadcaster. When we were--we went through the election and, post the election, we were having our meetings in a room at the Gold Rush Inn. Post election, I indicated to Pam that I wished her to continue on that; and to continue to deal with all aspects of communications. And as a result of that request, that we, as a government, would be transferring the responsibility for Connect Yukon from Government Services to Community and Transportation Services, and that Pam would have that as her responsibility.

In answer to a question whether she had acquainted Cabinet colleagues with her assignment of additional responsibilities to Minister Buckway, Ms. Duncan replied:

Yes. It seems to me that it may have been that even the whole Caucus--where I said, you know, I do not discuss communications issues for these reasons, and to avoid conflict. That was immediately post election, as well. And Cabinet colleagues have been reminded, on several occasions, that I do not discuss communications issues. They don't even bring them up with me. Nor do Caucus members.

In answer to a question whether she had given instructions to Deputy Ministers of the Departments of Government over which she held ministerial responsibility, advising of her brother's corporate and business interests and the actions taken by her to appoint a Cabinet colleague to act for her, she replied:

When I met with you, and post our meeting, I also spoke with Kirk Cameron, upon his appointment as Deputy Minister of Executive Council Office. I spoke with him about this. I asked him to also meet with Gord. I also asked him to advise other deputies. Now, I did not communicate that instruction to him in writing, and I did not--I do not recall saying to him, Have you done this? The other thing I did, with the entire letter from you, is that I had it on my desk and looked at it several times, and felt that there was more that needed to be done, so I passed it to Chief of Staff, Debbie Hoffman, and said, Make sure that I do everything that has to be done in here.

It was Ms. Duncan's recollection that she had given those instructions to Ms. Hoffman in the

month of July. She agreed that on November 7 Ms. Hoffman drafted and put before her for signature a letter which she then signed addressed to Minister Buckway which is marked as Exhibit 18 and is attached as Appendix VII.

Ms. Duncan also agreed that she had signed on December 6, 2000 a letter entered as Exhibit 19 addressed to Deputy Minister Angus Robertson. That letter is attached as Appendix VIII.

3. When Ms. Duncan assumed office as Premier on May 6, 2000 she became Minister of Finance, Minister of Economic Development and held responsibility for the Executive Council Office and for the Yukon Development Corporation. She relinquished her ministerial responsibilities with respect to the Department of Economic Development to another Minister in the month of June, 2001.

4. In questioning Ms. Duncan I asked for an explanation why the letter attached by her to Disclosure Form A filed with the Clerk of the Legislative Assembly under the *Executive Council Code of Conduct Regarding Conflict of Interest* was one addressed to me, in identical wording to Ms. Duncan's May 23 letter to me (Exhibit 17; Appendix V) but dated July 4, 2000 with no reference to the May 23 date. I asked those questions of Ms. Duncan because in her Form A filed in 2000 and again in 2001, when asked on the form what corporations, etc., doing business in Yukon, she or any member of her family held a financial interest she answered in handwriting in 2000 "see attached letter" and in 2001 "see letter on file". As I did not recall receiving a letter from her dated July 4, I asked for an explanation and whether she had sent the letter to me on July 4. She replied:

I didn't. That is simply a sloppiness on my part; in that, rather than attach a photocopy of the signed letter, we just pulled the--in handing my form--conflict of interest form in, we pulled a copy of the letter off the word processor, as opposed to handing in a photocopy. It was just, we have to get this downstairs, grab this letter. And so that's what we did.

She said that the copy of the letter off the word processor automatically showed the date of that occurrence and not the date of the actual letter. She said she believed this had been done by an Administrative Assistant, Heather Hierlihy. Ms. Duncan said that after the April 4 e-mail was read in the House she went and looked at her file in the Clerk's office, noticed the July 4 date and it was Ms. Hierlihy who gave her the explanation of what had happened. Immediately following

the completion of Ms. Duncan's evidence I asked for Ms. Hierlihy to attend in the interview room to be questioned by me and she came immediately the request was made of her.

5. Ms. Duncan said the first she had heard of the April 4 e-mail addressed to Mr. Jenkins (Exhibit 9) was when it was read into the record of the House by Mr. Jenkins. Ms. Duncan has no information about who is the author of the e-mail.

6. Ms. Duncan said that on the May motor trip to Dawson City with Mr. Albert and Mr. Cunning departmental business was discussed including various aspects of the Yukon economy. Ms. Duncan was asked if there was any discussion on either or both of the two prongs of the complaint that Mr. Jenkins had brought against her - "concealment" from public view of her brother's business transactions with government and the "singling out" of Mr. Jenkins' loans for immediate recovery and not then proceeding against other debtors. She said that when in Opposition she had been briefed on outstanding loans. She said it was her belief that all of those loans should be collected in a fair and reasonable way. Speaking directly to the question asked of her, Ms. Duncan said:

So I don't recall who brought it up specifically. I do recall saying we wanted a fair policy; that we wanted to collect on them. We wanted to collect on all of these loans. Certainly, I believe that Mr. Albert raised Mr. Jenkins, specifically; I did not. And that is my recollection of the conversation. I recall that there was no mention, whatsoever, of any of my brother's businesses, or business interests.

Ms. Duncan was asked specifically what Mr. Albert had said on this occasion about the Jenkins loans. She said she believed he said something to the effect that "successive governments have had papers ready to deal with Mr. Jenkins and have not proceeded". Ms. Duncan said she did not recall making a specific response to what Mr. Albert said about the Jenkins loans but she said she gave him directions to have prepared a fair and reasonable policy so the government could proceed to collect on all outstanding loans.

7. Ms. Duncan recalled meeting with Mr. Albert around the end of June. She agreed that she could have met with him at both 11:00 a.m. and 4:00 p.m. on June 30. When asked about any discussion at or about that time, referring to the Jenkins loans, she said:

I don't recall any specific discussion about the Jenkins loan. I would have asked him how the loans policy, that we had discussed earlier, was coming, as part of my own, you know,

follow-up. We've talked about this, it's, you know, six weeks later; how's the overall policy going? But I don't recall a specific discussion about any one of the outstanding loans.

With respect to discussion about Total Point Inc. Ms. Duncan said:

I recall Mr. Albert raising Total Point, and me specifically--and I must describe this--pushing back my chair, myself from table, and putting my hands up and saying, I can't talk about this. And, specifically, no; saying--my body language is what I remember. And I remember specifically that my language, body language and physical language, being no, I can't talk about this.

Q Did you say that; that you couldn't talk about it?

A I recall saying that.

Q And did any further discussion take place, on the subject of your brother's situation with the ministry, over Total Point, once you had given that indication?

A I can recall Mr. Albert--he may have raised it on one other occasion. As I said, I don't have written notes. I remember being clear about, I don't talk about this.

Q Was there, on that or any other occasion, as you recall it, any discussion between you and he, as to whether his relationship with the government, with respect to that agreement, was such that it constituted a loan that was outstanding, by Total Point, to the government?

A I remember words, me saying specifically, if it's not a loan, it's not--it's not there, it's not discussed. I remember saying those words in a meeting. I don't remember more about the context than that. Or, I should say, I don't remember much more than that. He may have said something about Total Point, and I just--I can recall those words, specifically. And the context of that, if I might say, is that I know--and know--coming into office, I knew that Total Point was not on any list.

Q Of arrears, you mean?

A Exactly. The lists that we saw in Opposition. I knew. Because I know the businesses on there. And I knew who--I knew that list. I read my briefing notes and read the list, know Total Point is not listed; neither is Total North, or anything else.

Ms. Duncan said she knew more at the present time about Total Point's relationship with government than she knew when she took office because of what has been in the papers. She said she knew there was some kind of financial agreement and that it was not a specific loan under an Economic Development Agreement. She said:

And I knew that I could comfortably deal with the loans issues, because I knew there was no business interests of Gord's on there. And I--sorry, Mr. Hughes. I was just going to say that, as far as I recall, I was answering a direct--an issue raised by Mr. Albert; I was not raising anything.

Q In other words, when that subject did arise, it was his initiative, not yours?

A Absolutely.

Ms. Duncan said she had never seen Exhibit 3 (the contribution agreement) until it was shown to her during the questioning of her by me on October 4, 2001. She said she had never had any discussions about it either with her brother nor with anyone in government.

8. With reference to preparing for the August 31 retreat, Ms. Duncan said that she would not have withheld anything from Mr. Albert that he felt he needed to do his job. She said she may have declined to share a political party document with him that she described as a caucus document but there was no withholding of information that she thought he needed to fulfil his role.

9. Ms. Duncan said it was her belief that Mr. Albert, as Deputy Minister, had not facilitated the Love secondment agreement the way he should have done. She said he had not been fair to the employee, Love, nor to Foothills and that he had not worked well with the Public Service Commission. She said it was quite possible that Mr. Albert may have raised this issue with her during a break at the August 31 retreat. She said by that time the matter had been resolved because of her intervention. She said if Mr. Albert had asked her about it at that time she would have told him that it had been dealt with in “a no further-discussion-required type of tone of voice”. She said “I suspect I would have been somewhat cold”.

10. Ms. Duncan recalled being briefed by Brian Love in Toronto on the evening of September 11 on what had happened at the meeting of Energy and Mines Ministers that had been held earlier in the day.

11. Ms. Duncan said she first saw Exhibit 4 (the Albert to Moodie e-mail of September 7, 2000) on Friday, September 21, 2001 when in consultation with her legal counsel about the current investigation. She said she could think of nothing that would have prompted it. She said the content of the e-mail was not any direction she had given to Mr. Albert. She said about the e-mail:

My first reaction to it is that Mr. Albert has put words into my mouth, and has gone off on a

tangent, and is--is on some other agenda. Because my request to him has been, had been, I want a policy, I want to collect on all the loans. I have never singled out anybody on that list. And there's lots of people on that list.

12. Ms. Duncan said that item number 10 on Mr. Albert's memo of September 20 (Exhibit 5) reading "Loan Arrears: Prepare a loan arrears policy and submit to Management Board" was in accord with her understanding of what had been discussed on that subject at the September 18 meeting with Mr. Albert and Mr. Halliday. With reference to that document the following questioning then occurred:

Q And I notice there is no mention, there, of any specific loans.

A No. Because the focus had always been, let's get a policy. Let's get a clear, comprehensive, policy that we can then say, collect on these outstanding receivables. This is one of those things that, it seems to me, government has let--had left in the "too hard" pile. You know, that pile on people's desks that's just the "too hard". And it was, Let's get a policy, let's get on with this.

Q As you recollect that meeting, was either the Jenkins loan or the Total Point business arrangement discussed?

A No.

Q And neither are recorded in that document, is that correct?

A Neither are on that document.

13. Ms. Duncan acknowledged that Exhibit 20 was the policy statement on loans recovery that had gone to Management Board and that Exhibit 21 constitutes instructions given by Management Board to the Department. She said that as the policy statement was being developed she met with Ms. Moodie and Charles Sanderson, the Deputy Minister of Finance, who contributed to the work that was being done in preparing the policy statement within the Department of Economic Development. She said the Department now has the instructions and authority to proceed and the new Minister of Economic Development carries responsibility for the matter.

14. Ms. Duncan discussed the September 25 meeting at which time the services of Mr. Albert as Deputy Minister were terminated. She said that by this time she could not see Mr. Albert working out with the new government and she took the step she considered appropriate.

15. The Premier acknowledged that she had had concerns about the performance of Mr. Brandt. On one occasion when she had a concern she did not bring the matter to the attention of senior staff. On another occasion she expressed her concern to Mr. Albert. She said she had previously contacted the Public Service Commissioner, Pat Daws, and asked what she should do about her concern. She says she was advised by Ms. Daws to speak to Deputy Minister Albert about the matter which she said she proceeded to do. She was asked if she had given Mr. Albert any direction as to what he should do as a result of what she had brought to his attention. She replied:
No. Further to what Ms. Daws had advised me, I said, It's up to you how you deal with this. You are the deputy; you deal with your employees. I'm conveying a concern to you; what you do with it now is up to you.

Ms. Duncan said that on another occasion she had expressed a concern about Mr. Brandt to Deputy Minister Cameron. She said she went to Mr. Cameron, as the Cabinet Secretary, for advice. She said that once she had brought the problem to Mr. Cameron's attention she did not expect a follow up report from him. She said once she had shared her concern in this way she considered it was then the job of the Deputy to deal with it.

16. At the conclusion of my interview with Ms. Duncan I gave to her the opportunity, as I did with all others interviewed, to add anything she thought relevant to my assignment that she had not had the opportunity to express in answering the questions put to her. Ms. Duncan responded in the following way and made reference to the second paragraph of Mr. Jenkins' May 8 letter of complaint (Appendix I):

Yes, I would like to say something. I have always, since the day I was elected, held the conflict of interest guidelines, the Code of Ethics, in the highest of regard. I believe that I have fully, not only complied with them, but lived up to their spirit and intent. And I've worked very hard to do that, and to ensure that I did. And that any family actions ensured-my very--and my pattern of behaviour, my personal moral code, is such that I fully believe I have lived up to them. I do not agree with Mr. Albert. I believe that what is said in that paragraph is wrong. That I'm a very fair individual. And I have, in all my actions as a Member and as a Cabinet Minister, as the Premier, I consistently asked the question, Is this fair to all concerned? That is my method of behaviour; that's who I am. I'd also like to add that, when I first met with you, Mr. Hughes, you said to me that I should not suffer as premier because my brother is involved in business and has had dealings with the government; nor should my brother suffer because I'm the premier. Especially when we have lived up to your advice.

(ix) **Debbie Hoffman**

1. Prior to May, 2000 Ms. Hoffman was engaged in the practice of law in Yukon. On the day the government was sworn into office she assumed the position of Chief of Staff in the Office of the Premier.

2. At the outset of her employment the Premier assigned to Ms. Hoffman responsibility for taking charge of all conflict of interest matters on behalf of Cabinet members and other members of the Government Caucus. She said that responsibility required her, firstly, to go through the annual disclosure statements with government members prior to them being filed and, secondly, to take charge if a conflict of interest matter arose involving a government member. She said that in July Ms. Duncan gave her my letter of May 25 (Exhibit 16; Appendix VI) with instructions to review it, follow up on any matters that were required by the letter and to file it. Subsequently Ms. Hoffman requested from the Premier a copy of her letter to me of May 23 and it was made available to her (Exhibit 17; Appendix V).

3. Ms. Hoffman was asked if she was aware of compliance by the Premier with the requirement of disclosure and subsequent abstaining from voting and participating where a conflict was involved. She answered in the following way, firstly addressing the matter from a general perspective and then with a specific example. She said:

Pat, at one of our earlier cabinet meetings, and I do attend cabinet meetings, told her colleagues that she would not be able to deal with any communications issues that involved Gord Duncan, and that she would feel most comfortable not dealing with communications issues because, even though Gord might not be a person directly connected with that particular issue, there might be broader repercussions where he might have some opportunity to be involved with the communications issues. So she made it quite clear to her cabinet colleagues that this is not something that she would be able to deal with.

...

When we've dealt with communications issues--and I think, in particular, it was surrounding Connect Yukon, which is a highspeed Internet deal that was done by the previous government--when we have talked about issues like Connect Yukon and communications issues, Pat has absented herself. She has actually gotten up and left the room before.

4. Ms. Hoffman confirmed that the Premier had appointed Minister Buckway to act in her place in instances where her brother's business interests interfaced with the Department of Economic

Development. She said those instructions were given verbally to Ms. Buckway in the early days of the new administration and confirmed by a letter prepared by Ms. Hoffman on November 7, 2000. Ms. Hoffman was asked what prompted her to write the letter. She replied:

Well, over the course of the summer, Pat had asked me whether or not I had followed up on the, I guess, directives that were contained in your letter. And I was very busy during the summer, and I hadn't had the opportunity to follow up on it; I just hadn't gotten to it. And so Pat would ask me questions, from time to time, about, have you gotten this done; have you gotten this done? And she would keep on me over the summer. And I hadn't gotten to it. And we were also in the House during the summer time. So, when the fall came, I believe that I actually drafted the letter in September or October. I didn't actually print the thing off until November, and I printed it off November 7th, and provided it to Pat.

5. Ms. Hoffman said letters of instructions to Deputy Ministers of the Departments of Government over which Ms. Duncan had ministerial responsibility and which could be involved in business relations with her brother were not written. Ms. Hoffman said she was wrapping up her law practice, working pretty well full time in the Premier's office from May 6 onwards and this was a task that just never got done. She said she knew that the Premier had clearly outlined to Deputy Minister Cameron how conflict of interest matters involving herself were to be handled and Ms. Hoffman said she wrote the letter of December 6 (Exhibit 19; Appendix VIII) that went from the Premier to Deputy Minister Angus Robertson. Ms. Hoffman said she also met at that time with Mr. Robertson to discuss the matter with him.

6. Ms. Hoffman had little contact with Mr. Albert from May to September, 2000. She said they attended one meeting together and talked on the telephone a couple of times.

7. Ms. Hoffman said that one of her duties was to attend meetings of Government Caucus. She said in the early days of the new administration the collection of long outstanding loans was discussed and the discussion continued over the course of several meetings. She said caucus made it clear to the Premier that they wanted a policy in place to collect outstanding loans, some of which had been in that category for years, and she said the consensus was that it was not good business practice to leave them in that position. She said caucus members knew the names on the list and names would come up from time to time. She listed a number of names that came up including that of Peter Jenkins. She said that the discussion was that a policy was required to collect on all the outstanding loans and names came up as examples of loans that were

outstanding. On the issue of “singling out” any loan for collection, Ms. Hoffman’s gave the following evidence:

Q To your knowledge, was any decision taken to single out any loan for collection, prior to the arrival and implementation of that policy?

A No. No, no one was singled out. In fact, in relation to Peter Jenkins, people had said, you know, Peter has to be part of the pack, part of the group, because you wouldn’t want to single him out, either in a positive way or in a negative way. Because we wanted to have a fair policy that applied to everybody. So its--

Q Do you know who expressed that point of view?

A Pat Duncan expressed that point of view very clearly. I expressed that point of view.

Q Was there anybody who ever argued with that point of view?

A Oh, no. No. I was just trying to recall who actually spoke on the point. But there was nothing, contrary to that, suggested in caucus.

Q And you say you remember Premier Duncan taking that position?

A Absolutely.

Q In caucus?

A Yes.

Q Do you know when?

A Because it was ongoing, that’s difficult to say. So I can’t--I can’t tell you precisely when, but it was sometime between when we were sworn in, and that fall, because we were having discussions during that time in particular, on the loans policy, because Caucus wanted Pat to provide a directive to her department.

8. Ms. Hoffman said that as far as she could recall the government’s agreement with Total Point Inc. had never been a subject of caucus discussion.

(x) **The Honourable Pam Buckway**

1. On May 6, 2000 Ms. Buckway assumed ministerial responsibility for the Departments of Community and Transportation Services and Justice in the Yukon Government.

2. Ms. Buckway said that a couple of days before the Cabinet was sworn into office the Premier

advised her that anything that arose that had to do with her brother should be spoken to by Ms. Buckway. In addition, she was told that anything to do with communications were to be delegated to her because of the potential for conflict of interest with Ms. Duncan's brother. She said Total North is a company that has communications dealings. Soon after Ms. Buckway received these instructions caucus became aware of the added responsibilities assumed by Ms. Buckway. Ms. Buckway said she has had no dealings in connection with Gordon Duncan, nor with Joe Muff and Total Point Inc. She has never seen the contribution agreement and knows nothing about it.

3. Ms. Buckway acknowledged receiving, in November, the Premier's letter to her of November 7 (Exhibit 18; Appendix VII). She was asked if she had any knowledge whether Ms. Duncan ever did exclude herself from voting or participating in debate on matters involving communications technology or communications infrastructure development in the Yukon Territory. She replied:
Yes. She would get up and leave the room, or say she couldn't talk about that, and excuse herself. I think I told you, when I talked to you in August, that I remember her leaving either a cabinet or a caucus meeting when the subject came up. And I think--I've been in conversation, you know, in the hallway, with a group of people, and the subject came up, and she'd leave. Mostly, it was Connect Yukon but... she just, you know, scrupulously stayed away from any discussion of anything like that.

Ms. Buckway added that in cabinet and caucus meetings it was Ms. Duncan's consistent pattern to leave when there was any discussion of her brother's business. She said ordinarily it would have been her responsibility to answer questions on these matters when they arose in the House but, because she was away when the subject came up in the spring of 2001, Minister Eftoda responded for the government and he continued to do so after her return because "he was familiar with it".

4. Ms. Buckway said there were discussions in caucus about outstanding loans and caucus felt the loans should be repaid. She said the total owing added up to a considerable amount of money. She said caucus directed its view to Cabinet that these loans should be repaid. She said that in caucus individual loans were not discussed in detail although some names were mentioned including one of her relatives by marriage. She said the context in which individual names were mentioned would be "look who's on the list". She was asked if she could recall any discussion involving loans outstanding by Mr. Jenkins' company. She replied:

- A I recall that there was mention of it. Because, of course, everybody was well aware that that loan was still outstanding.
- Q And was any position taken about it?
- A Not any more specifically than with regard to any other loan.
- Q To your knowledge, was any special direction given to the Minister of Economic Development, to pursue that loan to the exclusion of others?
- A I don't recall any such direction.
- Q Do you recall any other loans being singled out for attention?
- A No, I don't.

5. Towards the end of the questioning of Ms. Buckway she was asked if she could contribute anything further on the two allegations against Ms. Duncan of "singling out" and "concealment".

She replied:

- A No, I don't, other than to say I find them both very difficult to believe.
- Q And why is that?
- A Because, from my knowledge of Pat Duncan for many years, it would be uncharacteristic of her to give such direction. She's not that kind of person.
- Q Not what kind of person?
- A Not double dealing and dishonest. I've always found her to be extremely straight forward, honest and up-front about everything. Otherwise, I wouldn't be in her cabinet, I wouldn't have considered running for the Liberal Party.
- Q That's all, thank you. Unless there's anything else you want to add.
- A I don't think so, sir.
- Q I've given you every opportunity to put what you want upon the record?
- A Yes, you have.

(xi) **Michael Brandt**

1. Mr. Brandt was Deputy Minister of Government Services in the Yukon Government from 1994 to 1996 at which time the governing party was the Yukon Party. After a short time out of government, Mr. Brandt returned in October, 1997 to his present position in the Department of Economic Development and is now known as Director of the Trade and Investment Branch. He said that the job of the Branch is to be advocates of the private sector to create employment and

support business, primarily through pursuing exports, increasing export trade, attracting investment and improving business' ability to become investment or export ready.

2. Mr. Brandt said his Branch did not have responsibility for previously made government loans that remained outstanding. Specifically, he said he has had nothing at all to do with the outstanding Dawson City Hotels loans. He said he knows nothing about a "separating out" of the Dawson City Hotels loans from other loans for immediate collection.

3. Mr. Brandt was asked what involvement he had with the Total Point contribution agreement of July 11, 1997. He replied:

Well, Total Point has been an active client of ours; and so, while they were a client before I came on board, which is when this agreement was created, we were active participants in this particular product line, trying to achieve commercial success. So, as a result, we have participated together on trade missions, and we've done all sorts of things with Total Point to assist them as a company to commercialize this product line.

4. Mr. Brandt said that Total North in which Gordon Duncan has an ownership interest is geared to the local market whereas Total Point Inc. in which Mr. Duncan also has an ownership interest is "a unique conglomeration of technology, a unique product that he (Gordon Duncan) was looking to export". Mr. Brandt agreed that some transmitter units that were called for delivery by a specified date in the contribution agreement have never been delivered. He agreed that the matter of bringing some satisfactory resolution to this issue now rests with Deputy Minister Robertson.

5. Mr. Brandt said he had never discussed the Total Point agreement nor anything else about Total Point's business with Premier Duncan although he recalled that at a Team Canada briefing attended by Premier Duncan on February 2, 2001 he had made a mistake which he described as occurring in the following way:

...I had brought up the name "Total Point," because they are a Team Canada alumni, and they were on our invitation list. The only reason I remember it so clearly is that when I brought up their name, the Premier just flagged me down immediately and said, "I don't want to discuss them at all period." I remember feeling like I made a bit of a mistake..

Mr. Brandt said that it was clear to him that the Premier's reaction was because of the whole potential for conflict and she would just rather not discuss it at all.

(xii) **Angus Robertson**

1. Mr. Robertson has been Deputy Minister of Economic Development since the first week of December, 2001. He has worked in government service in different parts of the Country for the past twenty years. In 1997 he became Assistant Deputy Minister of Intergovernmental Relations in the Executive Council Office of the Yukon Government. From May, 2000 to December of that year, while he served in that office, Premier Duncan was the Minister in charge of the office. She was also the Minister to whom he reported when he moved to the Department of Economic Development.

2. Mr. Robertson acknowledged receipt, during his first week in office as Deputy Minister, of Ms. Duncan's letter dated December 6. Prior to his arrival in the Department of Economic Development he was unaware that the Premier had a brother who had business dealings with the Yukon Government. He knew nothing of the Total Point Contribution Agreement. Mr. Robertson was asked if the Minister followed the policy of exclusion, referred to in the letter, from involvement in matters relating to communications technology or communications infrastructure delivery in the Yukon Territory. He replied "absolutely". He was asked whether he had fulfilled the directive to refrain from all references to dealings between the government and Mr. Duncan and his companies in his relations with the Minister of Economic Development. Again, he replied "absolutely".

3. Mr. Robertson said that a contribution agreement is a standard form of agreement that he had used in his days in government. He was asked to describe the nature of a contribution agreement: Well, I guess the way I've normally described a contribution agreement is that it's an arrangement whereby dollars are provided to an individual or an organization or an association, to contribute towards a project. And that may be something that involves going to conferences, to advancement in education, it may be providing a report of some sort. But I guess the critical thing, that I've always understood, is that it's not--it's different than a contract, in the sense that a contract is dollars that are provided to an individual, and you contract that individual to provide something by such and such a date, a goods or services provided under a contract.

Mr. Robertson was then asked the following questions and he gave the recorded answers:

- Q Does the contribution agreement, such as we're dealing with here, fall into the category of being a loan?
- A Certainly not, in my opinion. I think the one thing that I--you know, in looking at

the contribution agreement, the one thing that struck me as being different about this is the very clear articulation of the delivery of certain things, by a certain date, to the Yukon Government. Which I found--not that I'm the most experienced person, but I found that a little bit unusual.

Q And I think we'd be in agreement that all of the product, that was contracted to be delivered, has, as of this date, not yet been totally delivered.

A That's right.

Mr. Robertson was referred to the delinquent loan statements dated December 31, 1999 and June 28, 2000 (Exhibits 1 and 2) and asked why, since the date by which the balance of the product was to be delivered was June 30, 1999, reference was not made to Total Point in those two delinquency statements. He replied:

Well, fundamentally, they are--the arrangement, through the contribution agreement with Total North, is not a loan of money; it's a non-refundable contribution agreement. I mean, that's very clear, that in no way, shape or form was there any understanding, through that contribution agreement, that it was actually a loan and that it was something that would be repaid in terms of money coming back to the government. It was very much set out as an arrangement whereby the money was provided to the company in return for development of some product which, I agree, has not, in full, been provided to us. So, in terms of the standard management processes employed in the Department, that arrangement, that contribution agreement, would never show up as being a delinquent loan, because it's not a delinquent loan.

Mr. Robertson went on to say that there is an outstanding issue, in terms of the product, but certainly not an outstanding loan. He said he would "absolutely not" expect to find any record of the Total Point matter in delinquency loan statements of the kind the department issues from time to time including those dated December 31, 1999 and June 28, 2000 (Exhibits 1 and 2). Mr.

Robertson added:

I honestly do not believe that you can treat a contribution agreement as being something that's in arrears, or outstanding, or delinquent. And I guess just all my time in government, federally, provincially and territorially, I've never seen a contribution agreement treated as something that's in arrears, as much as--because, as I say, it's not a loan, it's not something that's, you know, outstanding in terms of paying back some or a portion or the rest, or whatever. It's an unfinished project, Val was working on trying to find some--Val Mather was working, trying to find some resolution, and I was hopeful that that, you know, would have achieved success.

Mr. Robertson gave considerable evidence about efforts he has been involved in since April 20 until the present time in an endeavour to achieve resolution of the Total Point matter. To a question whether he still carries an air of optimism that a successful resolution will be arrived at,

Mr. Robertson said his hope is that a resolution for the delivery of product that is identified in the agreement can be achieved. He acknowledged that the discussions with the Department of Community Services and Transportation, which would be the user of a number of the units in its emergency measures branch, have indicated the need to provide an equivalent product to what was originally agreed to because years have gone by and technology has changed so that delivery could be of a lesser number of units that are worth more money. Mr. Robertson said that to have closure there would have to be some type of value assessment of what the product that Total Point has in its shop could be used for and take it from there and try to resolve the matter in that way.

4. Mr. Robertson said that when he arrived at the department there was not a written comprehensive loans collection policy in place and while such a document was in the course of preparation, his discussions with Assistant Deputy Minister Moodie revealed that the initiative was a much more complex problem than initially thought because of the nature of the client group - non-profit societies, for profit businesses and everything - "it was turning into a nightmare" he said.

5. Mr. Robertson acknowledged that Exhibit 20 represented the policy that was ultimately delivered to Management Board and that Exhibit 21 reflects the decisions of Management Board and the direction that the Board has taken with respect to the policy document. He said that Ms. Moodie worked diligently in the preparation of Exhibit 20 with Ministry of Finance personnel.

6. Mr. Robertson said that to his knowledge there was never any discussion about singling out individual loans for recovery - neither Mr. Jenkins' loans nor anyone else's. He said:
As I say, there was very much, in fact, the flip side of that, in terms of when I came into the job. It was very much, how do we approach this very sensitive issue in a way that it seemed to be transparent and fair across all individuals and sectors that have these outstanding loans. So the policy initiative, in my mind, made a lot of sense.

He said that the only discussion he ever had about the policy with Minister Duncan related to her enquiries about how the development of the policy was proceeding. He agreed that the Premier, wearing her ministerial hat, had an interest in seeing the policy put in place.

(xiii) **Heather Hierlihy**

1. Ms. Hierlihy became Administrative Assistant to the Premier in May, 2000. She was familiar with Exhibit 17 (Appendix V) - the Premier's letter of May 23 addressed to me. She had been involved in the technical side of its preparation and dispatch to me.

2. Ms. Hierlihy was asked to explain the "July 4" date on the letter attached to Form A under the *Executive Council Code of Conduct Regarding Conflict of Interest* that was filed by the Premier with the Clerk of the Legislative Assembly. It is the letter that was identical in content to Ms. Duncan's letter to me of May 23 (Exhibit 17; Appendix V). She said that the different date is explained by the computer printing off the correct letter but with the date of the printing rather than the date of the letter. She said that in her experience this is a reasonably common occurrence although she agreed that the computer did have the capacity to produce a copy of the letter bearing its original date when commanded to do so. She was asked if she was involved with this particular attachment to Form A. She said the letter was on her hard drive and she assumed she probably printed it off for the Premier but she did not specifically remember doing so.

7. **CONCLUSIONS WITH RESPECT TO THE ALLEGATION OF “SINGLING OUT”**

The questions to be answered are:

- (i) _____ Did the Minister of the Department of Economic Development instruct the Deputy Minister of that Department to “**single out and demand the immediate repayment of outstanding loans**” that a company (Dawson City Hotels) owned by Peter Jenkins, MLA, has with the government of Yukon?
- (ii) If the answer to question (i) is “yes” is Minister Duncan in breach of section 3 of the *Code of Ethics* and, by extension, the *Conflict of Interest (Members and Ministers) Act*?

The only person who gave evidence that supports an affirmative answer to the first question is the former Deputy Minister, Maurice Albert.

Mr. Albert said that to target the Jenkins loans for immediate repayment, as he said the Premier did, was unethical and for her to use the power of her office to go after a member of the opposition was likewise unethical and it was not correct. Mr. Cunning said to go after the loans of one person to the exclusion of other debtors would be impossible to defend from a political standpoint and it would be wrong to do so. Mr. Halliday said that such a pursuit would be a vindictive approach to the Jenkins loans. Minister Buckway said she would view directions to single out the Jenkins loans for collection and concealing Gordon Duncan’s financial relationships with the government as amounting to double dealing and dishonesty. Without yet answering question one, I agree with those assessments of the allegation of “singling out” by witnesses Albert, Cunning, Halliday and Buckway.

In my judgment, the public expects fair play by those entrusted with public office. I cannot imagine how, what Mr. Albert attributes to Premier Duncan on the “singling out” issue, could possibly be an advantage to her, politically or otherwise. It is my belief that the public would see the conduct Mr. Albert attributes to Ms. Duncan of demanding, in isolation, immediate collection action against the Jenkins loans in the same light as described by Messrs Albert, Cunning, Halliday and Ms. Buckway; that is to say, unethical, wrong, vindictive and impossible to defend.

In my view such conduct, if it occurred, would be a distinct disadvantage to Premier Duncan from every perspective imaginable.

Prominent in my mind, as I have considered this matter, are the steps taken by Ms. Duncan, in the very first days of her administration, to ensure that during her time in office she conducted herself in compliance with the conflict of interest laws that are applicable to her. I believe her to be sincere in taking those steps and in her intention to honour the advice she received. I will say more on that subject when I address the “concealment” matter. Also present for my consideration is the evidence of several witnesses who told of steps taken by Ms. Duncan, since her election as Premier in 2000, to honour the conflict of interest laws and to avoid their violation. I believe that the steps taken in that regard, as related by witnesses Cameron, Halliday, Hoffman, Buckway, Brandt and Robertson, were taken in compliance with the advice Ms. Duncan received on how to comply with the law and avoid its violation.

I have had all the foregoing factors in mind as I have considered whether, on the occasions identified by Mr. Albert, Ms. Duncan did act unethically, with vindictiveness and in a way that would be seen as double dealing and just plain wrong. It is Mr. Albert, alone, who says the Premier conducted herself in that manner.

Witnesses Cunning, Halliday, Moodie, Mather, Hoffman and Buckway had never heard anything with respect to a targetting of the Jenkins loans until the time of the arrival of Mr. Albert’s September 7 e-mail to Ms. Moodie. Ms. Duncan flatly denies ever instructing that action be taken on the Jenkins loans in isolation from all other loans owing to the government. She is adamant that she gave no such instructions to Mr. Albert. She described Mr. Albert’s September 7 e-mail as putting words into her mouth. She said “I have never singled out anybody on that list”. She explained that her focus had always been to get a clear comprehensive policy to enable collection of all of the outstanding receivables.

Mr. Albert says that at the two meetings on June 30 the Minister was definite that she wanted aggressive collection action on the Jenkins loans. He said that whenever they met over the summer she would reiterate those instructions. He says that she told him that it was the caucus

that decided that that should be done. Mr. Cunning, Ms. Hoffman and Minister Buckway, all of whom attend caucus meetings, had no knowledge of caucus ever taking such a position. There is no suggestion from any witness other than Mr. Albert that Premier Duncan had given instructions to move on the Jenkins loans separate from other outstanding loans that remained on the government's books.

In a number of instances Mr. Albert was wrong in the evidence he gave. I will cite two of them that bear directly on the "singling out" issue, the first of which has been of considerable and significant assistance to me as I decide the matter before me. Firstly, Mr. Albert said the sending of his September 7 e-mail to Ms. Moodie was prompted by Mr. Love telling him that the Premier was very upset that no collection action had been taken on the Jenkins loans and that the information that "Pat want (sic) the loan collection to be undertaken ASAP" was the result of his discussion with Mr. Love. Mr. Love said he had never discussed with the Premier the indebtedness of Dawson City Hotels to the Government of Yukon on any outstanding loans. Mr. Love also said that he had never discussed with Mr. Albert the indebtedness of Dawson City Hotels to the Government of Yukon on outstanding loans. In particular, Mr. Love said he had never had any discussion with either the Premier or Mr. Albert about the immediate calling in and taking action to collect on the Dawson City Hotels loans that had been made by the Department of Economic Development to the Hotel company. I believe Mr. Love and I accept in its entirety what he said in this regard.

Secondly, Mr. Albert said that when he returned to his office at the end of the day on June 30 he told Ms. Moodie he had been instructed to move on the Jenkins loans. Ms. Moodie said that prior to the September 7 e-mail she had not had any indication from Mr. Albert or anyone else that he was under instructions to proceed with the collection of the Jenkins loans and the reference in the e-mail to those loans came as a surprise to her. I believe Ms. Moodie and I accept in its entirety what she said in that regard.

I do not believe that Ms. Duncan, Premier and Minister of Economic Development, at any time gave instructions to Mr. Albert or to anyone else that the Jenkins loans were to be singled out for immediate payment and collection while all other debts on the Department's books remained idle.

Mr. Albert and in turn, Mr. Jenkins, are in error in the allegation made in that regard. Accordingly, I answer the first question posed on page 64 of this decision in the negative. In reaching this conclusion I have taken into account the notes recorded in Mr. Albert's book relating to the meetings on June 30 and September 18.

I now turn to a possible and plausible explanation for Mr. Albert's belief, wrong as I believe it to be, that could go to explain his evidence on the "singling out" issue.

There is no question that from May 18 onward the Premier placed responsibility with Mr. Albert for formulating a new policy for loan recovery. Clearly, she was not satisfied with the collection policies of the previous administration and she wanted a policy that would lead to recovery of all monies owing to the government. The government caucus wanted that action taken and for the four months from mid May to mid September, 2000, the request for the production of such a policy was a subject raised by Minister Duncan each time she met with Deputy Minister Albert. I believe that Mr. Mather, in evidence I have already recited, in paragraphs 2 and 3 at pages 42 to 44, very well captured the scene relating to loans collection as it played out over the four months period. Members of the government caucus were well aware of the outstanding Jenkins loans. What I have referred to in paragraph 6 at page 31 of the evidence of Mr. Cuning, in paragraph 3 at page 43 in the evidence of Mr. Mather, and in paragraph 4 of pages 57 and 58 in the evidence of Ms. Buckway affords ample evidence of that fact. The Jenkins loans were ones to which government caucus members wanted to see some resolution, once a new fair and even-handed loans collection policy was in place - a policy that would allow for the maximum possible recovery of all monies owing to the government. I am satisfied that that was the all encompassing policy that caucus wanted in place and that conclusion is consistent with the evidence of Premier Duncan, Mr. Halliday, Ms. Moodie, Ms. Hoffman, Minister Buckway and Mr. Mather.

I refer again to Mr. Mather's evidence that is recorded in paragraphs 2 and 3 at pages 42 to 44 of this decision which says it exactly as I believe the situation to have been: government caucus members, through the Minister, put pressure on the Deputy Minister to get a loans policy in place that would be consistent with recovery on all loans so that when collection proceedings

were pursued against all debtors, one of those pursued for payment would be Dawson City Hotels. Mr. Mather phrased it well when he said “I think there was pressure to get the loans policy out so that we could take action. We wanted to be consistent with all loans, but I think the pressure was this loan in particular”.

I am prepared to give to Mr. Albert the benefit of the doubt that he incorrectly construed his instructions as a targetting, in isolation, of the Jenkins loans. The alternative is that he knowingly gave false evidence on this issue but with the presence of the possible and plausible explanation that I have just reviewed, I am prepared to opt in favour of that explanation rather than the alternative.

When September arrived Mr. Albert had no new policy in hand pursuant to the instructions he had first received on May 18. He acknowledged that, with other pressures, the preparation of the policy had slipped through the summer and he had no product ready to present. Mr. Albert had come to realize at about August 31 that his tenure with the government might not be of long duration. While I have rejected the explanation of the September 7 e-mail resulting from a discussion with Mr. Love, it may very well have been prompted by a decision on Mr. Albert's part to show some progress on the loan recovery front, knowing as he did that the government wanted action on the Jenkins loans. He did not appreciate, as he should have, that that was to be in the context of the all embracing loans collection policy that four months previously he was instructed to prepare.

The directive in the e-mail was not followed because of Ms. Moodie's check with Mr. Halliday who told her that to proceed in isolation against the Jenkins loans would not be in accord with the wishes of the government. Ms. Moodie told Mr. Albert of that decision on his return to Whitehorse from Eastern Canada. It is my belief that there was no mention by Mr. Albert in his summary of the September 18 meeting (Exhibit 5) about the Jenkins matter because he had been told either by Ms. Moodie or Mr. Halliday that the content of his September 7 e-mail was a non-starter. Mr. Halliday said that the date of September 22 on Exhibit 5 was the date Mr. Albert had committed, at the September 18 meeting, to have the loan arrears collection policy prepared for submission to Management Board. That was an impossible task to be accomplished in one week

given the inaction over the summer months. In fact it apparently turned out to be quite a formidable task as it took until March 2001 for the new policy to reach Management Board and over the intervening months the services of personnel in the Ministry of Finance augmented the resources in the Department of Economic Development to complete the task.

In light of my finding that the “singling out” alleged by Mr. Jenkins in making his complaint against Premier Duncan did not occur, an answer to the second question posed on page 64 is not required. I reserve for another day, in some other factual setting, an interpretation of the scope of section 3 of the *Code of Ethics* and its reference to deriving an “advantage” which Mr. Jenkins believes could be interpreted to include a “political interest, benefit or advantage”.

8. **CONCLUSIONS WITH RESPECT TO THE ALLEGATION OF
“CONCEALMENT”**

The questions to be answered are:

- (i) Did the Minister of the Department of Economic Development instruct the Deputy Minister of that Department “**to conceal the indebtedness**” owed to the Government of Yukon by a company, Total Point Inc., owned by her brother?
- (ii) If the answer to question (i) is “yes”, is Minister Duncan in breach of the provisions of the *Conflict of Interest (Members and Ministers) Act*?

Once again the only person who gave evidence that supports an affirmative answer to the first question is former Deputy Minister, Maurice Albert. Mr. Albert says these instructions were given to him on one occasion between 4:00 p.m. and 5:00 p.m. on June 30, 2000. Only he and Premier Duncan were present at the time. I will discuss the circumstances under which he says these instructions were given to him but I will first give further consideration to Premier Duncan’s appreciation of and contact with the requirements of the *Conflict of Interest (Members and Ministers) Act* of the Yukon.

At the Premier’s request I met with her, her husband and her brother, Gordon, nine days after she was sworn into office. I have never had any doubt about the Premier’s desire to meet her responsibilities within the requirements of the law and she is quite correct in what she attributed to me in her closing testimony as recorded on page 53 of this decision. Following our May 15 meeting, the formal advice requested of me was recorded in Premier Duncan’s letter of May 23, 2000 (Exhibit 17; Appendix V). My response to her is recorded in my letter of May 25, 2000 (Exhibit 16; Appendix VI). I advised Ms. Duncan to:

- (i) Disclose any matter before Cabinet or the Legislative Assembly that has any relationship whatever to her brother’s ownership interests and then abstain from voting on matters and participating in debates or other considerations of the matter and from making representations on the matter to another member or minister.
- (ii) Request a cabinet colleague be appointed to act for departments of government over which she has ministerial responsibility in all instances where her brother has business relationships with those departments. The matter should be brought to the attention of the Executive Council and colleagues advised that they are to

avoid references to matters dealt with by them in their relationships with Ms. Duncan.

- (iii) Give written instructions to Deputy Ministers of the departments of government over which she presides advising of her brother's corporate business interests and the actions taken to have a colleague act in her place to deal with matters involving her brother.

Besides the evidence of Premier Duncan, the evidence of Mr. Cameron, Mr. Halliday, Ms. Hoffman, Minister Buckway and Deputy Minister Robertson shows a sincere and generally successful effort to comply with my advice on the part of the Premier, her political staff and the senior public service. I accept that the safeguards that were related to me by the persons just identified were in fact put in place and the steps taken to honour them did occur. A significant deficiency was the failure to notify all Deputy Ministers impacted by my advice of Gordon Duncan's business interests and the steps taken to appoint Ms. Buckway to act in the place of Minister Duncan in order to deal with matters involving those interests. Other than that and the delay in confirming by letter Ms. Buckway's appointment that had been made verbally in May, I believe the system has worked well in the best interests of the Yukon Government, the residents of the Territory and the particular individuals involved. It is apparent that my advice to the Premier has been taken seriously and compliance, with the identified exception, has been generally in accordance with that advice.

When Mr. Jenkins first brought this matter to my attention in April I attended at the office of the Clerk to peruse Ms. Duncan's disclosure documents. As my summary of her evidence and that of Ms. Hierlihy discloses, I was mystified by the July 4 date on the letter, that in all other respects except the letterhead, was identical to Ms. Duncan's letter to me of May 23 (Exhibit 17; Appendix V). The answers given to me by Ms. Duncan, supported by the evidence of Ms. Hierlihy have clarified that mystery and I am satisfied that nothing improper occurred but I would recommend that the admitted "sloppiness" involved not be repeated.

It is unfortunate that Deputy Minister Albert did not receive a letter advising of Minister Buckway's acting appointment with respect to Gordon Duncan's business transactions. However, Mr. Albert acknowledged that at all relevant times he was aware of the brother/sister relationship and that Mr. Duncan was a part owner of Total Point Inc. - a company that had not met

all of its obligations to the Department of Economic Development. He said that he was engaged in endeavouring to reach an agreement to resolve the outstanding matter between his department and the company - a matter that continued to engage him and his staff until the time of his departure from government service.

It did not surprise me that Mr. Albert acknowledged that “I fully understand and understood, and still do, that the premier could not provide any kind of directions that would put any businesses that her brother was involved in into a preferential treatment”. He had held Deputy Minister status in government for close to twelve years. With that extensive background, Mr. Cameron’s assumption of a “given” that Deputy Ministers had a responsibility to ensure that conflict issues did not arise with respect to their Ministers would most certainly apply in the case of Mr. Albert. This was also a situation where Mr. Cameron’s opinion would apply that if a Deputy is aware of something that could pose a conflict for his or her Minister, there is a responsibility resting with the Deputy to make sure the Minister is advised of any perception that a conflict could arise.

In the closing portion of my review of Mr. Cameron’s evidence I quoted extensively from what he said during the course of the October 2 questioning of him. Viewing what he said, with the benefit of my own experience of having served as a Deputy Minister for a seven year period, I thought that Mr. Cameron had done an outstanding job in an extemporaneous presentation of outlining an important part of the role and responsibilities of a Deputy Minister. I have concluded that what he said ought to be available for other Deputy Ministers to read and certainly those Deputies engaged in the public service of the Yukon will receive a copy of this decision.

Details of the July 11, 1997 contribution agreement were discussed by witnesses Albert, Mather and Robertson. They all agreed that the transaction covered by the agreement was not a loan. All agreed that all of the twelve SAR Field Transmitter Units had not been delivered by the agreed date of June 30, 1999. Since that time the Department of Economic Development has been in communication with Total Point Inc. endeavouring to arrive at a resolution of the outstanding matter in a manner satisfactory to both of the contracting parties. Mr. Albert spoke

of endeavours of his staff over the summer of 2000. Mr. Mather told of his instructions from Mr. Albert during the summer to bring satisfaction and resolution to the matter. Mr. Mather detailed the negotiations with Total Point Inc. that took place under his leadership between November 2000 and January 2001 at which time he left the matter for resolution with Deputy Minister Robertson. Mr. Robertson acknowledged his leadership role over recent months and expressed his hope that a resolution can be achieved.

Mr. Albert agreed that at the 4:00 p.m. meeting on June 30 with Minister Duncan he raised the issue of Total Point. This was at the time that Ms. Duncan was pressing for the preparation of a new loans recovery policy. Mr. Albert says that a difference of opinion surfaced between them on whether the Total Point agreement was in arrears. Mr. Albert was clearly of the view that the failure to deliver all twelve units by the agreed date placed Total Point in a position of being in arrears and it was his view that the reporting of those arrears belonged on an arrears report. He said that Ms. Duncan said Total Point was not in arrears, it was not a loan, and that she had better not see it listed on an arrears report.

Ms. Duncan recalls Mr. Albert raising Total Point in their discussions on or about that day but her response to him was that she could not talk about the matter. She said that at some time she did say "if it's not a loan...it's not there". She said that when she came into office as Premier she knew that Total Point was not on any list because she had seen the lists when she was a member of the opposition and she said she was satisfied that she could comfortably deal with the loans issue because her brother's business interests were not involved. Ms. Duncan knew that Total Point had some business dealings with the government under some kind of a financial arrangement that was not a loan under an Economic Development Agreement. She knew nothing of the detail of the contribution agreement and had never seen it until it was shown to her on October 4, 2001. During her time in opposition Ms. Duncan had kept totally away from her brother's business transactions with the government. She purposely excluded herself from all involvement. I am satisfied that she was not in any conflict in requesting that a fair and even-handed loans collection policy be prepared by her staff that would enable recovery of all monies owing to the government.

Mr. Mather explained why “undelivered units” as existed under the contribution agreement would not show up on an arrears statement. Mr. Robertson explained that in his twenty years of government service he had never seen a contribution agreement treated as “something in arrears”. He said “...it’s not a loan...it’s not something...outstanding in terms of paying back some or a portion or the rest...It’s an unfinished project...Val was trying to find some resolution...”. Mr. Robertson said he retains hope that a resolution for delivery of product can be achieved. Clearly there is unfinished business here and the responsibility, from the government’s perspective, to bring the matter to a conclusion rests with Mr. Robertson and the new Minister of Economic Development.

The discussion on Total Point at the 4:00 p.m. meeting was obviously of short duration. With Mr. Albert and Ms. Duncan having repeated to me all they recall about it, it could not have lasted more than a minute. It was the second time that day that Mr. Albert had raised Total Point with Minister Duncan. On neither occasion was it raised by the Minister. I am completely satisfied that when Ms. Duncan arrived at her office on the morning of June 30, 2000 she had no thought or intention of discussing during that day her brother’s business interests with Mr. Albert nor with anyone else. She had no agenda to hide or conceal anything from anyone on this subject on that day or on any other day. She had no intention of involving herself in the Total Point matter and I am satisfied that she took absolutely no initiative at any time to do that.

As a Deputy Minister of twelve years standing, Mr. Albert should have known better than to raise with the Minister the business interests of her brother. Having raised it at the morning meeting where the Premier remained silent, it is difficult to understand why he took a second run at it in the afternoon. It must also be appreciated that when Mr. Albert raised the Total Point issue it was in the midst of a discussion about the new collection policy that the Minister requested be put in place. With Mr. Albert feeling as strongly as he said he did on this matter, rather than raising Total Point with the Minister he should have proceeded to prepare, with the assistance of his staff, an all encompassing recovery policy that would have brought within the net any deficiency in the delivery of product as called for under outstanding agreements. To have done so would have been in accord with the instructions given to him but, for four months, nothing happened.

I said earlier in this decision that one of the two factors that motivated me to investigate the complaint brought by Mr. Jenkins was that if the allegation of “concealment” were true, there could well have been a breach of the *Act* by Ms. Duncan. Addressing provisions of the *Act* in his May 8 letter of complaint (Appendix I) that list circumstances under which a Member would be in a conflict of interest, Mr. Jenkins, with obvious reference to the allegation of “concealment” that he had made against Ms. Duncan said: “...she was attempting to ensure that a business owned by her brother did not have to fulfil its contractual obligations to the Government of Yukon”. What I now know and did not know when I accepted the complaint for investigation is that that statement is patently untrue.

Regardless of whether Mr. Jenkins expressed himself in the manner just indicated, on the strength of his conversation with Mr. Albert or as a result of his anonymous telephone communications, or on a combination of them, the fact is the only person who could have initiated talk that culminated in the advancement of such a proposition was Mr. Albert. What occurred here is that Mr. Albert, in raising Total Point with Ms. Duncan for the second time on June 30, provoked a response from her in an exchange of no more than a minute’s duration and then proceeded to communicate to others his interpretation of what Ms. Duncan had said and in doing so he alone planted the seeds that blossomed into this statutory investigation. Instead of meeting Mr. Cameron’s expectations that a Deputy Minister would protect his or her Minister from a situation that could give rise to a perception of conflict of interest, Mr. Albert single-handedly laid the ground work for the serious allegation of “concealment” that has been levelled against the Premier.

I have no hesitation in accepting Premier Duncan’s recollection of what occurred at the 4 p.m. meeting on June 30 with respect to this issue over the explanation given by Mr. Albert. Accordingly I answer the first question posed on page 70 of this decision in the negative. That being so, an answer to question two also posed on that page is not required. I will say, however, that had the answer to question one been in the affirmative, so would have been the answer to question two as a Minister acting in the manner attributed to Ms. Duncan by Mr. Jenkins in that portion of his letter of May 8 to which I have referred, would constitute conduct in violation of the provisions of the *Conflict of Interest (Members and Ministers) Act*.

I said earlier in this decision that the other factor that motivated me to investigate the complaint brought by Mr. Jenkins was that if the allegations of “concealment” and “singling out” were not true, a significant and serious smear of the reputation of the Premier of the Yukon would have occurred within the protected environment of the Legislative Assembly which allows for subsequent repetition in other forums of what has been said in the Legislature with complete immunity. That is exactly what has occurred. The wisdom of those in the Legislative Assembly in 1995 when the *Conflict of Interest (Members and Ministers) Act* was enacted must be acknowledged because without that legislation which provides for the appointment of a Commissioner with investigative powers it might never have been possible to put the public record straight. In filing this decision with the Legislative Assembly as I do today, the public record will show that the content of the e-mail read to the House during Question Period on the afternoon of April 19, 2001 was not true and the conduct attributed to the Premier was both false and malicious.

DATED at the City of Whitehorse in the Yukon Territory this 29th day of November, 2001.

The Hon. Ted Hughes, Q.C.
Commissioner

