

APPENDIX VI

Letter dated May 25, 2000 from Ted Hughes, Q.C. to Premier Pat Duncan



YUKON LEGISLATIVE ASSEMBLY
Conflicts Commission
 E.N. (Ted) HUGHES, Q.C.

EXHIBIT D 16
 Examination of: Debbie Hoffman
 Date: Oct. 1, 2001
 Doug Azar, Official Court Reporter
 DA

May 25, 2000

Premier Pat Duncan
 Government of Yukon
 Box 2703
 Whitehorse, Yukon
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*Original sent Priority Post,
 Marked "Confidential" - 25/05/00*

Dear Premier Duncan:

Re: Your letter of May 23, 2000

I write in reply to your letter of May 23rd. In that letter, you have reviewed the business interests of your brother, Gordon Duncan, and the extent of assignments that companies owned either entirely or in part by him have had, over the years, with the Government of Yukon. You have advised of your husband's employment by one of Gordon's companies and confirmed that neither you nor your husband have any ownership interest in any of your brother's corporate endeavours.

You have asked for my advice as to what you should do in order to conduct yourself and your affairs in accordance with requirements of the *Conflict of Interest (Members and Ministers) Act* (hereinafter referred to as the *Act*), and at the same time leave your brother in a position where he can continue his business associations with the Yukon Government in much the same manner that has existed over the last ten years or more.

I view your request of me as one made under Section 17(1) (a) of the *Act*. My obligation under Section 24 of the *Act* is to keep this advice confidential. You, of course, can at any time disclose the advice I give to you in this letter. If you take that step at some future point in time, you may wish to consider disclosing the contents of your May 23rd letter to me so that the factual base on which this opinion is premised will be clearly understood.

Section 2 of the *Act* provides that a member or a minister (you are both) would be in a conflict of interest if he or she makes a decision, or performs any other official function in the execution of his or her office, or participates in making a decision in the Legislative Assembly or in Cabinet, at a time the member/minister knows or ought to know that in the decision or function there is the opportunity or the reasonable

appearance of an opportunity to further his or her own private interest. It is a violation of that provision of the *Act* that you must avoid.

There is nothing in the *Act* that prohibits your brother doing business with the Government of Yukon and any of its agencies, boards or crown corporations because of your occupancy of the premiership and ministerial office,. Because of your occupancy of those positions there are, however, steps you must take to avoid violation of Section 2 of the *Act*.

For you to be involved as premier, minister or member in a decision or function that results in business for profit accruing to the corporate body owned by your brother which employs your husband would, in my view, create the opportunity for you to further your own private interest. Such an action on your part would violate Section 2 of the *Act*. So might such an action on your part if the resulting business for profit were to accrue to another of your brother's business enterprises because it might be successfully argued that under such circumstances, you ought to know that in your decision making or performance of some other function there exists the reasonable appearance of an opportunity to further your private interest.

You have indicated to me during our meeting on May 15th and in your letter that you look to me for advice of how to avoid situations that could be in violation of the *Act*. There is statutory and regulatory guidance to assist in accomplishing the avoidance that you quite properly seek.

Section 16(1)(c) of the *Act* provides:

- 16.(1) A Member or Minister who is, or would be, in a conflict of interest in a matter before the Legislative Assembly or the Cabinet may remove the conflict
- (a) . . .
 - (b) . . .
 - (c) by disclosing the conflict either to the Government Leader, where the matter is before Cabinet but not before the Legislative Assembly, or to the Legislative Assembly, where the matter is before the Assembly, and also abstaining from voting on the matter and from participating in the debates or other consideration of the matter, and from making any representations on the matter to another Member or a minister;
 - (d) . . .
 - (e) . . .

Schedule B of Order in Council 1981/085 under the Yukon Act (which is applicable by virtue of Section 15(1)(a) of the *Act*) sets out rules of conduct for ministers and provides:

Executive Council of Yukon – Code of Ethics

1 . . .

2 . . .

3 . . .

4 . . .

5 Whenever a matter comes before a department for which he [a minister] 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.

In my judgment, adherence by you to those two provisions will accomplish the avoidance that you seek. That is to say, firstly, pursuant to Section 16 of the *Act* you must disclose any matter before Cabinet or the Legislative Assembly that has any relationship whatever to your brother's ownership interests (and indicate your husband's employment relationship if the matter relates to his corporate employer) and then abstain as required by the Section.

Secondly, you should request that a cabinet colleague be appointed to act for departments of government over which you have ministerial responsibility in all instances where your brother, in either his personal or corporate capacity, has business relationships with those departments. In my view, you should bring this matter to the attention of the Executive Council at an early meeting. I would suggest that you acquaint Council members with your brother's ownership interests, request a colleague or colleagues to act for the departments concerned in all future dealings with your brother and his corporate entities, and advise your colleagues that they are to avoid any reference to those dealings in the course of their relationships with you. Such action on your part would, I believe, be within the spirit of point number 5 of the Code.

I would also recommend that you give written instructions to deputy ministers of the departments of government over which you have ministerial responsibilities (including the Deputy Minister to the Premier) and which could be involved in business relationships with your brother, advising of his corporate business interests and the actions that you have taken under point number 5 of the Code.

Adherence by you to the foregoing should, I believe, allow you to effectively meet the responsibilities you hold in government to honour the spirit and intent of the *Act* and

allow your brother to continue his business relationships as he has in the past, unencumbered by the public responsibilities held by his sister.

I have prepared this opinion with a view to accomplishing three objectives:

1. Compliance by you, at all times and in all circumstances, with the requirements of the *Act*. This is legislation enacted in the public interest and all residents of Yukon, including those who might have competitive business interests to those discussed in this letter, must consistently be the recipients of the benefits that the legislation is intended to convey.
2. Having offered yourself for public service and having been successful in that endeavour through the expression of the democratic will of the public, to allow you to meet your responsibilities of office in a manner that complies with the requirements of the law.
3. To allow your brother to continue his business activities with the Yukon Government in the pattern of his past relationships with government officials, both those elected to office and those employed by it. Likewise, with respect to the ability of your husband to continue his employment with one of your brother's corporate entities.

It has been my endeavour to structure my advice such that neither you, your husband nor your brother suffer any impediment as a result of your public duties, nor that any of you gain any favour or advantage as a result of those duties. When the four of us met on May 15th, the three of you were desirous that such a goal be achieved within the boundaries of existing law. I believe that the advice I have given to you in this letter achieves that objective.

Yours truly,



E.N. (Ted) Hughes, Q.C.
Commissioner of Conflict of
Interest for Yukon Territory