

**SUPREME COURT OF YUKON**

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COUR SUPRÊME DU YUKON  
MAR 20 2025  
FILED / DÉPOSÉ

Citation: *Yukon Ombudsman v Minister of Finance*,  
2025 YKSC 16

Date: 20250320  
S.C. No.25-A0014  
Registry: Whitehorse

BETWEEN:

The Yukon Ombudsman, Public Interest Disclosure Commissioner, Information  
and Privacy Commissioner, and Child and Youth Advocate

PETITIONERS

AND

The Minister of Finance (Government of Yukon)

RESPONDENT

Before Justice E.M. Campbell

Counsel for the Yukon Ombudsman, Public Interest  
Disclosure Commissioner, Information and Privacy  
Commissioner

Kelly Hjorth

Counsel for the Child and Youth Advocate

Shaunagh Stikeman

Counsel for the Respondent

I.H. Fraser and  
Stuart Leary

**REASONS FOR DECISION**

**OVERVIEW**

[1] This matter was heard on February 24 and 25, 2025. Considering the nature of the relief sought, I gave an oral decision on March 3, 2025, consisting of a brief overview, my legal analysis on the issue of statutory interpretation raised by the dispute between the parties and my findings, with written reasons to follow. These are my written reasons.

[2] The Ombudsman and the Child and Youth Advocate are Officers of the Legislative Assembly. They filed a petition seeking the following relief against the respondent, the Minister of Finance (the “Minister”):

1. A writ of mandamus requiring the Minister of Finance to recommend unaltered budget estimates of the Yukon Ombudsman, Public Interest Disclosure Commissioner, Information and Privacy Commissioner, and the Child and Youth Advocate (together the “Officers of the Legislative Assembly”) to the Legislative Assembly in accordance with the *Ombudsman Act*, SY 2002 c.163, s. 9, and the *Child and Youth Advocate Act*, SY 2002, c. 1, s. 22;
2. A declaration that the Minister of Finance is compelled to recommend the budget estimates of Officers of the Legislative Assembly, as transmitted the Speaker, to the Legislative Assembly;

...

[3] However, during their oral submissions, the petitioners indicated that the Court has the authority to modify the language of the declaration sought if the Court finds they are entitled to a declaration.

[4] The Public Interest Disclosure Commissioner and the Information and Privacy Commissioner are also named petitioners in this matter. They are Officers of the Legislative Assembly as well. Currently, the Ombudsman serves as the Public Interest Disclosure Commissioner and the Information and Privacy Commissioner.

[5] Last fall, a dispute arose between the petitioners and the Minister regarding his role and the role of the Management Board in the review of the petitioners’ budget estimates submitted for approval by the Legislative Assembly. The petitioners are of the view that the Minister has interfered in their budget approval processes and that his actions are contrary to the applicable legislation.

[6] The dispute between the parties is based on the parties' differing interpretations of statutory provisions enacted by the Legislature - the *Ombudsman Act*, RSY 2022, c 163 ("*Ombudsman Act*"), the *Child and Youth Advocate Act*, SY 2009, c 1 ("*Child and Youth Advocate Act*"), and the *Financial Administration Act*, RSY 2002, c 87 ("*FAA*") - and the way these statutory provisions interact with one another.

[7] In essence, the petitioners are of the view that the Members' Services Board ("MSB"), an all-party committee of the Legislative Assembly, has sole statutory authority to review the petitioners' budget estimates and to determine the amounts to be put forward for approval by the Legislative Assembly. The respondent is of the view that the Management Board has final statutory authority to review the petitioners' budget estimates and to determine the amounts to put before the Legislative Assembly for approval. In addition, the respondent invokes parliamentary privilege to oppose the relief sought by the petitioner.

[8] For the reasons that follow, I find the *FAA*, which is the paramount act, grants final authority to the Management Board to review the petitioners' budget estimates and to determine the amounts to be put forward by the Minister for approval by the Legislative Assembly. As a result, I do not need to weigh in on the issue of parliamentary privilege.

[9] The petition is dismissed.

## **FACTS**

[10] In May 2024, the Child and Youth Advocate started to develop the budget estimates for her office for the 2025-26 fiscal year. Once finalized, her budget estimates were submitted to the MSB.

[11] In June 2024, the Ombudsman started to develop his budget estimates for the 2025-26 fiscal year for the Office of the Ombudsman, the Office of the Information and Privacy Commissioner, and the Office of the Public Interest Disclosure Commissioner. Once finalized, the budget estimates, inclusive of the three offices, were sent to the Speaker of the Legislative Assembly for review by the MSB.

[12] On September 16, 2024, the MSB met to discuss the budget estimates submitted by the petitioners. The Child and Youth Advocate as well as the deputy Ombudsman attended the meeting to answer questions from the board members.

[13] Later that day, the Ombudsman received an email from the Director of Administration, Finance and Systems for the Legislative Assembly (the “Director”) informing the Ombudsman that the MSB had completed its review and that no changes were recommended to his budget estimates.

[14] The Child and Youth Advocate also received an email from the Director later that day informing her that the MSB had completed its review and had approved her budget estimates with one exception.

[15] On October 9, 2024, the Speaker of the Legislative Assembly transmitted the petitioners’ budget estimates, as reviewed and approved by the MSB, to the Minister for recommendation to the Legislative Assembly. Except for the reference to the petitioners’ respective enabling statutes and specific votes, the letters are essentially the same and read as follows:

The Members’ Services Board met on September 16, 2024, and on that date reviewed and approved the enclosed Mains Estimates for Vote 23.

Pursuant to section 9(2) of the *Ombudsman Act*, I am delivering these estimates to you for recommendation to the Legislative Assembly.

[16] On November 8, 2024, a Management Board analyst sent an email to the clerk of the Legislative Assembly with copy to the Director and other individuals. The email contained several attachments including a revised version of the Ombudsman's budget estimates and of the Child and Youth Advocate's budget estimates for consideration by the Management Board. It appears the recommendations for the budgets of the Ombudsman and the Child and Youth Advocate were substantially lower than what had been recommended by the MSB.

[17] The same day, the Director forwarded the email to the Ombudsman and the Child and Youth Advocate.

[18] On November 13, 2024, the Director wrote back to the analyst outlining, among other things, his view of the applicable statutory process for approval of budget estimates of Officers of the Legislative Assembly and insisting on the MSB having sole authority over the review of the Officers' estimates before they are submitted to the Legislative Assembly for approval. The Director wrote:

... This separation is by design and is part of ensuring the independence and impartiality of the Legislative Assembly and the House Officers from the government in power.

[19] The Director specifically referred the analyst to s. 9(2) of *Ombudsman Act*, s. 22(2) of the *Child and Youth Advocate Act* and *Motion 8* of the Legislative Assembly ("*Motion 8*").

[20] The same day, the Assistant Deputy Minister of the Management Board and Budget Secretariat, Department of Finance, wrote back to the Director stating that,

based on their review of legal advice, they were confident that the “Management Board has the authority for approving budget requests from Member Services Board and can deny requests.”

[21] On November 27, 2024, the Ombudsman sent a letter to the Speaker of the Legislative Assembly, as the Chair of the MSB, expressing his concerns with respect to the stated position of the Management Board and inquiring about what recourse the MSB may take against the actions of the executive.

[22] The same day, the Child and Youth Advocate also sent a letter to the Speaker in respect of what she saw as Management Board’s interference in the budget process and the risk to the independence and effectiveness of her office. The Child and Youth Advocate wrote that “[s]ection 22 of the *Child and Youth Advocate Act* is explicit in outlining the budgetary process: the Advocate submits the budget estimate to the Members’ Services Board (MSB), MSB reviews and approves the estimate, and the approved estimate is then transmitted to the Minister of Finance for recommendation to the Legislative Assembly.” She added that this budgetary process had been followed for the past decade of her tenure.

[23] On December 19, 2024, the Speaker wrote a letter to the Minister expressing his concerns about the Management Board Secretariat reviewing and lowering the Officers’ budget estimates rather than presenting the Officers’ budget estimates as reviewed and approved by the MSB. The Speaker added that the Management Board’s actions contradicted the legislated processes mandated by the *Ombudsman Act*, the *Child and Youth Advocate Act*, and *Motion 8* as well as “... the historical procedures of preparing

recommendations for presentation to the Legislative Assembly in a manner that cannot be interpreted as partial or interfering. ...”

[24] The Speaker also expressed the opinion that:

Members’ Services Board is the only financial oversight body that has a complete understanding of the positions of the house officers, including risks which can harm the ability of those offices to complete the work mandated to them. Management Board will not have this same understanding, and therefore is not fully informed to make adjustments to these estimates. Consistent with votes of Yukon Government departments, these votes are available for further debate within the Legislative Assembly, which is the next and only other level of scrutiny.

[25] The Speaker concluded by stating: “[t]he Board trusts that the 2025/26 mains recommendations” of the Officers “will be presented to the Legislative Assembly as approved by Members’ Services Board and as required by law.”

[26] On December 27, 2024, the Minister responded by letter to the Speaker stating his disagreement with the Speaker’s position that the MSB has sole and final authority over the amounts to be included in the estimates for recommendation to the Legislative Assembly.

[27] The Minister then expressed his position that the Management Board has the final say on those amounts. The Minister set out his position as follows:

As you know, every appropriation of any part of the public revenue must be recommended to the Legislative Assembly by message of the Commissioner, in the session in which the vote, resolution, address or bill is proposed.

By the operation of s. 4(2) of the *Financial Administration Act*, an act of the Yukon Legislature that has been made a paramount Act, it is Management Board that has been authorized to direct the form of the estimates of revenue and expenditure for the government for each financial year.

While the various Acts that you mention authorize the Members' Services Board to consider the budgetary requests of various bodies, and they authorize a process for reviewing and eventually submitting those requests to my attention as Minister of Finance, they do not ultimately effect [as written] the authority of Management Board to determine the amounts that the Government of Yukon will ultimately place before the Legislature as its estimates.

[28] The Minister added that his position reflected a legal opinion originally provided to the Yukon Legislative Assembly on this issue in 2008. The Minister also stated that, "it is [his] job, as the Minister of Finance to oversee the territory's spending in a fiscally responsible way on behalf of all Yukoners."

[29] On January 9, 2025, the Ombudsman wrote to the Minister to express his strong disagreement with the position taken by the Minister and his position that, in accordance with s. 9 of the *Ombudsman Act*, the Minister's only role in the budgetary process is to act as a conduit between the MSB and the Legislative Assembly. He added that s. 9 clearly directs the Minister "... to recommend the unaltered Estimate, as reviewed by the Members' Service Board (MSB), to the Legislative Assembly for due consideration. Such oversight of a Legislative Officer properly belongs to the Legislative Branch; namely, the Legislative Assembly and, more specifically, the MSB". The Ombudsman expressed the view that his budget estimates should not have been reviewed by the Management Board and that, in inserting itself in the budgetary process, the government threatened the independence of the three offices he oversees. Finally, the Ombudsman requested that the Minister confirm, by January 17, 2025, that he would comply with the relevant provisions of the *Ombudsman Act*, otherwise he would "have no recourse but to commence litigation for purposes of ensuring [the Minister's]



compliance with the Act, preserving the independence of [the Ombudsman's] office, and continuing to protect the right of the public, all as intended by the Legislative Assembly.”

[30] On January 13, 2025, the Child and Youth Advocate also wrote directly to the Minister. Her letter included a request that the Minister confirm he would comply with the budgetary process set out in the *Child and Youth Advocate Act*.

[31] On January 17, 2025, the Minister wrote back to the Ombudsman. In his letter, the Minister reiterated the position he had expressed in his December 27, 2024 letter to the Speaker. The Minister added that:

According to the *Financial Administration Act*, it is entirely appropriate and within the scope of the Management Board Secretariat to review estimates submitted by all departments, agencies, corporations, offices, or any other entity which is funded via the territorial government's budget. This has been the case and the approach for the entirety of my time as Minister of Finance, and given the legal opinion presented to the Legislative Assembly by the former Yukon Party government, I understand that this was the case for the 14 years prior.

[32] The Minister responded that it would be “... inappropriate to provide a commitment to any department or office receiving funds from the upcoming 2025-2026 budget” because the Management Board had not yet “... fully examined, let alone authorized any items for the budget.”

[33] On January 20, 2025, the Minister wrote back to the Child and Youth Advocate maintaining his position with respect to the Management Board's reviewing authority over the Officers' budget estimates and the paramountcy of the *FAA*. The Minister also stated that the Management Board had not finalized the budget and that, as the process was ongoing, no final decisions had been made.

[34] On January 23, 2025, as the parties' opposite views remained unchanged, and as it was expected the Minister would table the budget at the start of the Spring Session of the Legislative Assembly on March 6, 2025, the Ombudsman, the Public Interest Disclosure Commissioner, the Information and Privacy Commissioner, and the Child and Youth Advocate filed a petition in the Supreme Court of Yukon seeking an order in the nature of *mandamus* against the Minister as well as declaratory relief.

### **THE YUKON ACT, THE DIVISION OF POWER AND THE TERRITORIAL BUDGETARY PROCESS**

[35] A brief review of the respective roles and responsibilities of the executive and the legislative branches of the territorial government and of the judiciary, as well as of the territorial budgetary process is useful to better situate the dispute between the parties.

[36] In the Yukon, the federal *Yukon Act*, SC 2002, c. 7 ("*Yukon Act*") establishes a "system of responsible government that is similar in principle to that of Canada" (*Preamble* of the *Yukon Act*). In essence, the principle of responsible government means that the executive power must have the support of a majority of elected members of the Legislative Assembly to govern (*Re: Resolution to amend the Constitution*, [1981] 1 SCR 753 at 857-858). This means the executive must operate responsibly as it is accountable to the Legislative Assembly, and, ultimately, to its citizens.

#### **The Executive Power (Executive Branch)**

[37] The executive power in the Yukon is composed of the Commissioner (who is the representative of the Monarch and is appointed by the Government of Canada) and the Executive Council. The Executive Council consists of the Premier, who is the President of the Executive Council, and those other persons appointed by the Commissioner on

the advice of the Premier (s. 8 of the *Yukon Act* and s. 2 of the *Government Organisation Act*, RSY 2002, c 105). The Commissioner, on the advice of the Premier may appoint, from among the members of the Executive Council, ministers to hold office during pleasure to preside over the several departments of government and to discharge any duties, exercise any powers, and perform any functions that the Commissioner in Executive Council assigns (s. 2.2 of the *Government Organisation Act*). The executive branch is responsible for the overall governance of the territory. The executive implements and enforces the laws passed by the Legislative Assembly. Also, as part of its responsibilities, the executive develops policies for the territory and proposes bills to the Legislative Assembly.

### **The Legislative Power (Legislative Branch)**

[38] Section 10 of the *Yukon Act* creates the Legislative Assembly. Each member of the Legislative Assembly (“MLA”) is elected to represent an electoral district in the Yukon. A bill only becomes law if a majority of MLAs vote in favour of that bill.

[39] Together, the Commissioner and the Legislative Assembly constitute the Legislature of the Yukon. Once a bill is adopted by the Legislative Assembly, it requires the assent of the Commissioner to become a law of this territory.

[40] The Legislature has similar powers to those given to the legislatures of the provinces in s. 92 of the *Constitution Act, 1867*. Sections 17-23 of the *Yukon Act* describe the powers of the Legislature. Section 18 itemizes many of those powers. Of particular interest to this petition, the Legislature may make laws in relation to:

...

(c) the Executive Council;

(d) the establishment and tenure of public offices in Yukon and the appointment, conditions of employment and payment of office-holders; [and]

...

(v) the expenditure of money for territorial purposes;

### **The Judiciary (Judicial Branch)**

[41] The judicial branch of government is represented by the courts, whose role is to interpret and apply the law, and to resolve disputes in accordance with the law. It is completely independent of the executive and the legislative branches of government.

[42] As stated in *Canada (Attorney General) v Power*, 2024 SCC 26 at para. 50: “[t]he separation of powers allows each branch to fulfill its distinct but complementary institutional role without undue interference and to create a system of checks and balances within our constitutional democracy (*Ontario v Criminal Lawyers' Association of Ontario*, 2013 SCC 43 at para. 29).”

### **The Budgetary Process**

[43] Government expenditures must be approved by the Legislative Assembly. This means the Government of Yukon cannot appropriate funds from the Consolidated Revenue Fund (“CRF”) without the prior authorization of the Legislative Assembly. The CRF is comprised of all public moneys and revenue of the Government of Yukon (s. 28 of the *Yukon Act*). An Appropriation Bill is a proposed law that authorizes the expenditure of government funds. To be lawful, an appropriation of funds from the CRF must be recommended to the Legislative Assembly by message of the Commissioner (s. 29 of the *Yukon Act*).

[44] The appropriation process in the Legislative Assembly can be briefly summarized as follows:

- the Minister of Finance introduces an Appropriation Bill, which contains the government's estimates of expenditures, in the Legislative Assembly (s. 4(2) of the *FAA*; Standing Orders of the Yukon legislative Assembly 52). As stated earlier, the Appropriation Bill must be recommended by message of the Commissioner.
- The Appropriation Bill is considered in detail and debated by the members of the Legislative Assembly sitting in Committee of the whole (Standing Orders of the Yukon Legislative Assembly 55, 57 and 58). Upon the Committee's completion of consideration, the Chair of the Committee reports the bill to the Legislative Assembly for a vote. The budget estimates of the Ombudsman and the Child and Youth Advocate each constitute a specific vote in the Appropriation Bill. Their respective budgets are not included in the budget of any departments (see for example: *Second Appropriation Act 2024-2025*, SY 2024, c.15). If the bill passes, the Commissioner grants assent to the bill, which becomes law and authorizes the government's expenditures.

## **THE ROLES AND FUNCTIONS OF THE PARTIES AND OTHER ENTITIES**

### **The Ombudsman**

[45] The Ombudsman is an Officer of the Legislative Assembly appointed upon the recommendation of at least two-thirds of the members of the Legislative Assembly (s. 2 of the *Ombudsman Act*).

[46] The Ombudsman plays an important role and carries out an important mandate. The Ombudsman has the power to receive, investigate, settle, make recommendations and report on complaints from members of the public who believe they have been treated unfairly by territorial government departments and other territorial authorities identified in the *Ombudsman Act* (ss. 1, 11, 14 to 16 and 22 to 26 of the *Ombudsman Act*; *British Columbia Development Corporation v Friedmann (Ombudsman)*, [1984] 2 SCR 447 (“*Friedmann*”) at 459-61); (*Re: The Yukon Ombudsman*, 2023 YKSC 26, at para. 11).

[47] In *Friedmann* at 459-61, the Supreme Court of Canada described the important role played by the institution of Ombudsman:

The factors which have led to the rise of the institution of Ombudsman are well-known. Within the last generation or two the size and complexity of government has increased immeasurably, in both qualitative and quantitative terms. Since the emergence of the modern welfare state the intrusion of government into the lives and livelihood of individuals has increased exponentially. Government now provides services and benefits, intervenes actively in the marketplace, and engages in proprietary functions that fifty years ago would have been unthinkable

As a side effect of these changes, and the profusion of boards, agencies and public corporations necessary to achieve them, has come the increased exposure to maladministration, abuse of authority and official insensitivity. And the growth of a distant, impersonal, professionalized structure of government has tended to dehumanize interaction between citizens and those who serve them. See L. Hill, *The Model Ombudsman* (1976), at pp. 4-8.

The traditional controls over the implementation and administration of governmental policies and programs—namely, the legislature, the executive and the courts—are neither completely suited nor entirely capable of providing the supervision a burgeoning bureaucracy demands. ...

...

The Ombudsman represents society's response to these problems of potential abuse and of supervision. His unique characteristics render him capable of addressing many of the concerns left untouched by the traditional bureaucratic control devices. He is impartial. His services are free, and available to all. Because he often operates informally, his investigations do not impede the normal processes of government. Most importantly, his powers of investigation can bring to light cases of bureaucratic maladministration that would otherwise pass unnoticed. The Ombudsman "can bring the lamp of scrutiny to otherwise dark places, even over the resistance of those who would draw the blinds": *Re Ombudsman Act* (1970), 72 W.W.R. 176 (Alta. S.C.), *per* Milvain C.J., at pp. 192-93. On the other hand, he may find the complaint groundless, not a rare occurrence, in which event his impartial and independent report, absolving the public authority, may well serve to enhance the morale and restore the self-confidence of the public employees impugned.

In short, the powers granted to the Ombudsman allow him to address administrative problems that the courts, the legislature and the executive cannot effectively resolve.

...

[48] The Ombudsman may employ staff and may be provided with premises, equipment and supplies necessary to carry out the powers and duties of their office (ss. 7 and 8).

[49] Every year, the Ombudsman must provide a report on the affairs of their office to the Legislative Assembly (s. 31). Also, it is the Legislative Assembly that has the power to suspend or remove the Ombudsman from their function, or to reduce their remuneration (ss. 4 and 5).

[50] Therefore, the object and intent of the *Ombudsman Act*, as revealed by its provisions and by the overall scheme of the act, is to create an independent office of the

Ombudsman that provides for an effective means of oversight and accountability over government administration and to ensure the independence of the Ombudsman by having the Officer report directly and answer to the Legislative Assembly.

[51] The intent of the *Ombudsman Act* is reflected in the Government Leader's description of the provisions of the first *Ombudsman Act*, at the time of its second reading on December 8, 1994:

This act will establish the office of the Ombudsman for the Yukon, and in doing so, will fulfill the commitment of our four-year plan. The purpose of the ombudsman is to protect the public from the administrative powers of government. While our democratic system gives the public the ability to hold elected officials accountable through the ballot box, the same does not apply to non-elected administrators and employees who make up the government bureaucracy. As we all know, the size of modern government puts a large amount of interpretative and discretionary power in the hands of government managers as they work to apply the laws and policies created by this legislature. In the course of running any government, it is inevitable that there will be times when some citizens will feel that they have been treated unfairly, that mistakes have arisen, or errors have been made in the application of the law. The ability of an individual to seek redress, or to defend himself or herself in the face of such action by government administrators is very limited. It is for that reason that the office of the ombudsman will be created.

The ombudsman will be an independent, impartial advocate who will investigate and report on complaints about administrative actions of government. The ombudsman will be responsible for upholding the public interest and ensuring that individuals have recourse when existing avenues of resolution have been exhausted.

The act that we have introduced has the following specific provisions. The ombudsman will be appointed as an officer of the Legislature by Cabinet, on recommendations of this Legislature. The recommendation of this Legislature will also be required to ensure the independence of the ombudsman from government.



...

The budget for the office will be reviewed by the Speaker of the Legislature and approved by the Legislature. It will not be a budget under any department that may be the focus of an ombudsman investigation.<sup>1</sup>

### ***The Public Interest Disclosure Commissioner***

[52] The Office of the Public Interest Disclosure Commissioner is established by the *Public Interest Disclosure of Wrongdoing Act*, SY 2014, c 19 (“*PIDWA*”). The Public Interest Disclosure Commissioner is an Officer of the Legislative Assembly (ss. 44(2)).

[53] The *PIDWA* is “whistleblower” legislation. The purposes of the *PIDWA* are set out at s. 1. They are:

- (a) to facilitate the disclosure and investigation of significant and serious matters in or relating to public entities, that an employee believes may be unlawful, dangerous to the public or injurious to the public interest;
- (b) to protect employees who make those disclosures; and
- (c) to promote public confidence in the administration of public entities.

[54] The definition of a public entity under *PIDWA* is broad. The list of public entities includes departments and executive agencies, government corporations, offices of certain public officers and the office of the Legislative Assembly.

[55] The Public Interest Disclosure Commissioner may receive and review disclosures of wrongdoing(s) by public entities from employees (or former employees) of those public entities; receive a complaint from an employee who believes they have

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<sup>1</sup> Bill No 99: Second Reading (Hansard, 28<sup>th</sup> Legislature, Second Session, December 8, 1994)

been unfairly treated for making a disclosure; provide advice to employees who may have discovered a wrongdoing or been the subject of reprisal as a result of a disclosure; attempt to resolve the matter, when deemed appropriate; investigate disclosures and reports of reprisal; report on the results of their investigation; and, when appropriate, make recommendations to a public entity. If the Commissioner is of the view that the steps taken or proposed to be taken by the entity is not appropriate, they may report to the responsible Minister or the head of the public entity. Also, in case of complaints of reprisal, the Commissioner may refer the matter to arbitration (ss. 2, 3, 8, 9, 12, 17, 21, 23, 26, 28, 31, 33 and 35).

[56] The Public Interest Disclosure Commissioner may provide input to public entities that establish disclosure procedures under the act (ss. 5 and 6).

[57] Every year, the Public Interest Disclosure Commissioner must provide a report on the exercise and performance of their functions and duties to the Legislative Assembly (s. 43).

[58] In accordance with ss. 45(1) of the *PIDWA*, the Ombudsman serves as the Public Interest Disclosure Commissioner unless the Legislative Assembly recommends the appointment of someone else as Commissioner. Pursuant to ss. 45(2), if the office of the Ombudsman serves as the office of the Public Interest Disclosure Commissioner, as is the case at this time, then the Public Interest Disclosure Commissioner's staff and expenses are to be supplied and paid in accordance with the *Ombudsman Act*. In addition, the provisions of the *Ombudsman Act* regarding the term of office, remuneration, removal or suspension of the Commissioner apply.

[59] In my view, the object and intent of the *PIDWA*, as revealed by its provisions and by the overall scheme of the act, is to provide for a formal process by which employees or former employees of public entities may disclose wrongdoings by those public entities; to protect employees and former employees who come forward in good faith to report wrongdoings of public entities, and to create an independent office that provides advice on those issues as well as an effective means of oversight and accountability over the actions of public entities to promote public confidence in the administration of public entities. The act also contains provisions that reflect a legislative intent to protect the independence of the Commissioner by having them report to and answer directly to the Legislative Assembly rather than to the executive (ss. 43 to 45).

[60] As the budget approval process for the Commissioner is governed by s. 9 of the *Ombudsman Act*, my conclusion regarding the statutory budget approval process for the Office of the Ombudsman applies to the Office of the Public Interest Disclosure Commissioner.

***Information and Privacy Commissioner.***

[61] The purposes of the *Access to Information and Protection of Privacy Act*, SY 2018, c 9 (“*ATIPPA*”), are set out at s. 6. They are:

- (a) to protect the privacy of individuals by controlling and limiting the collection, use and disclosure of personal information by public bodies;
- (b) to require public bodies to implement security measures designed to prevent privacy breaches in respect of the personal information that they hold;
- (c) to ensure that individuals have access to their personal information held by public bodies and have a right to request correction of it;

- (d) to require public bodies to make particular types or classes of information openly accessible so that an access request is not required to access those types or classes of information;
- (e) to provide the public with a right to access information held by public bodies (subject to specific exceptions) in order to ensure government transparency and to facilitate the public's ability to meaningfully participate in the democratic process; and
- (f) to provide the commissioner with powers and duties that enable the commissioner to monitor public bodies' compliance with this Act and ensure that public bodies' decision-making is conducted in accordance with the purposes of this Act and that their administration is in accordance with the purposes of this Act. [my emphasis]

[62] The words 'public body' mean, a ministerial body, a statutory body prescribed as a public body, or an entity prescribed as a public body. However, a court, a judge, the office of a member of the Legislative Assembly or the office of an officer of the Legislative assembly are not public bodies (ss. 1.4 and 9).

[63] The Information and Privacy Commissioner may receive and investigate, if deemed appropriate, complaints by the public who believe their access to information or privacy rights have been breached by a public body; attempt to resolve the complaint; report on the findings of the investigation; and make recommendation(s) to the public body subject of the complaint. If the public body rejects the recommendation, a complainant may apply to the court for a review of the public body's decision (ss. 90, 91, 93, 95, 101 and 105).

[64] The Commissioner has additional duties, as set out in s. 112, which include informing the public about *ATIPPA*, and providing recommendations to the head of a

public body with respect to the exercise of the public body's powers or performance of duties under *ATIPPA*.

[65] In addition, the Commissioner must, on an annual basis, provide a report to the Legislative Assembly in respect of the performance of their duties and the exercise of their powers under the act. Also, the Commissioner may, if they consider it in the public interest to do so, provide a special report to the Legislative Assembly in relation to any matter relating to their powers and duties under the act (s. 117).

[66] As stated earlier, the Information and Privacy Commissioner is an Officer of the Legislative Assembly (ss. 109(2)). In accordance with ss. 110(1) and (2) of the *ATIPPA*, the Ombudsman is the Information and Privacy Commissioner unless the Legislative Assembly recommends the appointment of someone else. Pursuant to ss. 110(1)(b) and (c), the Office of the Ombudsman serves as the Office of the Information and Privacy Commissioner's staff and expenses are to be supplied and paid in accordance with the *Ombudsman Act*. In addition, the provisions of the *Ombudsman Act* regarding the term of office, remuneration, removal, or suspension of the Officer apply.

[67] Based on the provisions of the act and its overall scheme, I am of the view that the object and intent of the act includes the creation of an office that not only provides information and independent advice on issues regarding protection of privacy and access to personal information collected, used and disclosed by public bodies, but also provides for an independent and effective means of oversight and accountability over public bodies in relation to those matters. The act also contains provisions that reflect a legislative intent to protect the independence of the Commissioner by having them

report to and answer directly to the Legislative Assembly rather than to the executive branch (ss. 110, 117).

[68] As the budget approval process for the Commissioner is governed by s. 9 of the *Ombudsman Act*, my conclusion regarding the statutory budget approval process for the Office of the Ombudsman applies to the Office of the Information and Privacy Commissioner.

### **The Child and Youth Advocate**

[69] *The Child and Youth Advocate Act* establishes the Office of the Child and Youth Advocate. The Child and Youth Advocate is an Officer of the Legislative Assembly (s. 4(2)).

[70] The Child and Youth Advocate may employ staff and may be provided with premises, equipment and supplies necessary to carry out the powers and duties of the Advocate's office (ss. 8 and 10).

[71] Pursuant to s. 11(a), the primary role of the Child and Youth Advocate is to support, assist, inform, and advise children and youth who are receiving or eligible to receive government services and programs, or any other person with an interest in the child or youth, about those services and programs. This includes:

...

- (i) providing information and advice related to how to effectively access the designated service and any processes for review of decisions respecting the service,
- (ii) ... ensure that the views and preferences of the child or youth ... are heard and considered, having regard to their age and maturity of the child or youth [in relation to those services],

- (iii) promoting the rights and interests of the child or youth receiving or eligible to receive the designated service ..., and
- (iv) working with the child or youth ... to resolve issues [regarding those services] through the use of informal dispute resolution.

[72] In addition, in certain circumstances, the Child and Youth Advocate may review and provide advice to a public body, First Nation service authority or school board regarding a policy or systemic issue that raises a substantial question of public interest in relation to a designated service they provide (s. 12).

[73] Also, pursuant to s. 15, the functions of the Child and Youth Advocate include, on the referral of the Legislative Assembly or a minister, to review and report on any matter relating to the provision of designated services that involves the interests and well-being of children and youth. This may include a review of critical injuries, a death, or other specific incident concerning a child or youth in the care or custody of the government or a First Nation service authority.

[74] Every year, the Child and Youth Advocate must provide a report on the affairs of the Advocate's office, including financial statements, to the Legislative Assembly (s. 24).

[75] It is the Legislative Assembly that has the power to suspend or remove the Child and Youth Advocate from their function, or to reduce their remuneration (ss. 5 and 6).

[76] As a result, the object and intent of the *Child and Youth Advocate Act*, as revealed by its provisions and by the overall scheme of the act, is to create an independent office of the Child and Youth Advocate whose role is primarily to support, assist, inform and advise children and youth in respect of designated services provided by a public body; but also encompasses providing independent review, advice, and

oversight in respect of designated services for children and youth by public bodies. The act contains provisions that reflect the legislative intent to protect the independence of the Advocate by having them report to and answer directly to the Legislative Assembly rather than to the executive (ss. 4, 5, 6 and 24).

[77] The intent of the Legislature is reflected in the remarks made by the Honourable Mr. Glenn Hart, Minister of Health and Social Services, when introducing Bill No. 70, the *Child and Youth Advocate Act*, for second reading in the Legislative Assembly:

... This bill establishes the office of the child and youth advocate as an officer of the Legislative Assembly. While I, as the Minister of Health and Social Services, am taking the lead in bringing this bill forward, the child and youth advocate will be independent from the Yukon government.

This level of independence follows the trend across Canada to create independent offices that report directly to elected members. The primary role of the child and youth advocate will be to support and assist a child and youth in accessing designated services.<sup>2</sup>

[78] In summary, the petitioners are all Officers of the Legislative Assembly. Each of them is in charge of an independent office whose mandate includes oversight functions over government administration in their respective fields of operations. In addition, the enabling statute of each contains provisions regarding their appointment and tenure, reporting, remuneration, suspension or removal from office that ensure the Officers report to and answer directly to the Legislative Assembly, and that allow them to operate independently from the executive, whose actions the Officers are tasked with reviewing.

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<sup>2</sup> Bill No 70: Second Reading (Hansard, 32<sup>nd</sup> Legislature, First Session, March 30, 2009)



## The Minister

[79] The Minister is the respondent in this matter. Their important responsibilities are set out at s. 6(1) of the *FAA*. They include:

- |  |   |
|--|---|
| (a) the management and administration of the consolidated revenue fund;  | (a) de la gestion du Trésor;  |
| (b) the supervision of the revenues and expenditures of the government;  | (b) du contrôle des recettes et des dépenses du gouvernement;   |
| (c) all matters relating to the financial policy of the government; and  | (c) des questions relatives à la politique budgétaire du gouvernement;  |
| (d) the direction of the financial affairs of the government that are not assigned by this or any other Act to the Commissioner in Executive Council, the management board, or any other person. | (d) de la direction de toutes les questions en matière de finances publiques non attribuées par la présente loi ou une autre loi au commissaire en conseil exécutif, au Conseil de gestion ou à une autre personne. |

## The Management Board

[80] The Management Board is a committee of the Executive Council established under the *FAA*. It consists of the Minister, as chair, and two other ministers appointed by the Commissioner in Executive Council (s. 3).

[81] The functions of the Management Board are set out at s. 4 of the *FAA*:

- |   |  |
|---|--|
| (1) The management board shall act as a committee of the Executive Council in matters relating to               | (1) Le Conseil de gestion est un comité du Conseil exécutif chargé des questions suivantes :                     |
| (a) accounting policies and practices of the government, including the form and content of the public accounts; | a) les conventions et méthodes comptables du gouvernement, notamment la forme et le contenu des comptes publics; |

(b) government management practices and systems;	b) les systèmes et pratique de gestion du gouvernement;
(c) government financial management and control of revenue, disbursements and assets;	c) la gestion financière du gouvernement et le contrôle des recettes, des dépenses et des éléments d'actif;
(d) evaluation of government programs as to economy, efficiency, and effectiveness;	d) l'évaluation de l'efficacité et de l'économie des programmes du gouvernement;
(e) the management, control, and direction of the public service, including organization and staff establishments;	e) la gestion et le contrôle de la fonction publique, notamment son organisation et l'affectation du personnel;
(f) internal audit; and	f) la vérification interne;
(g) other matters referred to it by the Executive Council.	g) les autres questions dont le saisit le Conseil exécutif.
(2) The estimates of revenue and expenditure for the government for each financial year shall be prepared in a form directed by the management board for presentation to the Legislative Assembly by the Minister.	(2) Les prévisions des dépenses et des recettes du gouvernement pour chaque exercice sont préparées en la forme prévue par le Conseil de gestion en vue de leur dépôt à l'Assemblée législative par le ministre.
...	...

### **The Members' Services Board**

[82] Section 27 of the *Legislative Assembly Act*, RSY 2002, c 136, provides that the "Legislative Assembly may adopt Standing Orders for the orderly conduct of its business, and may amend the Standing Orders from time to time" (See also s. 16 of the *Yukon Act*).

[83] According to Standing Order 45 of the Yukon Legislative Assembly, the MSB is an all-party committee of the Legislative Assembly. The Speaker of the Legislative

Assembly is the Chair of the Committee (*Standing Orders of the Yukon Legislative Assembly*, March 12, 2024, Members' Service Board, Standing Order 45(2)).

### **Principles of Statutory Interpretation**

[84] This petition raises, among other things, questions of statutory interpretation. The modern approach to statutory interpretation is well-established. It provides that: “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament” in this case, the Legislative Assembly. *E.A. Driedger, Construction of Statutes*, 2nd ed (Toronto: Butterworths, 1983) at 87, *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at para. 21, and *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at para. 26.

[85] In *La Presse inc. v Quebec*, 2023 SCC 22 at paras. 23-24, the Supreme Court of Canada clarified two principles flowing from the application of the modern approach:

[23] First, the plain meaning of the text is not in itself determinative and must be tested against the other indicators of legislative meaning — context, purpose, and relevant legal norms (*R. v. Alex*, 2017 SCC 37, [2017] 1 S.C.R. 967, at para. 31). The apparent clarity of the words taken separately does not suffice because they “may in fact prove to be ambiguous once placed in their context. The possibility of the context revealing a latent ambiguity such as this is a logical result of the modern approach to interpretation” (*Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62, [2005] 3 S.C.R. 141, at para. 10).

[24] Second, a provision is only “ambiguous” in the sense contemplated in *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, if its words can reasonably be interpreted in more than one way *after* due consideration of the context in which they appear and of the purpose of the provision (paras. 29-30). This is to say that there is a “real” ambiguity — one that calls for the use of external interpretive aids like the principle of strict

construction of penal laws or the presumption of conformity with the *Canadian Charter of Rights and Freedoms* — only if differing readings of the same provision *cannot* be decisively resolved through the contextual and purposive approach set out by Driedger (*ibid.*). [italics in original]

[86] The *Interpretation Act*, RSY 2002, c. 125, must also be considered and applied when interpreting territorial statutes and regulations.

[87] Section 10 directs that every statute, regulation or every provision thereof shall be deemed remedial and shall be given the fair, large, and liberal interpretation that best insures the attainment of its objects.

[88] Section 8 provides that:

The title and preamble of an enactment shall be read as a part thereof intended to assist in explaining its purpose and object.

[89] Section 9 provides that:

(1) Marginal notes and references to former enactments form no part of an enactment but shall be deemed to have been inserted for convenience only.

(2) The headnotes and headings in an enactment, other than the headings identifying the Parts or Divisions into which the enactment is divided, form no part of the enactment but shall be deemed to have been inserted for convenience only.

[90] Finally, s. 4 of the *Languages Act*, RSY 2002, c 133, provides that the English and French versions of Yukon legislation and regulations are equally authoritative.

#### **THE BUDGETARY APPROVAL PROCESS UNDER THE *OMBUDSMAN ACT* AND THE *CHILD AND YOUTH ADVOCATE ACT***

[91] The *Ombudsman Act* and the *Child and Youth Advocate Act* contain specific and almost identical provisions regarding the petitioners' budgetary approval process.

[92] Subsections 9(1) and (2) of the *Ombudsman Act* read as follows:

(1) The Ombudsman shall submit annually to the Members' Services Board in respect of each financial year, an estimate of the sum that will be required to be provided by the Legislature to defray the several charges and expenses of the Office of the Ombudsman in that financial year.

(2) The Members' Services Board shall review the estimate submitted pursuant to subsection (1) and, on completion of the review, the Speaker shall transmit the estimate to the Minister of Finance for recommendation to the Legislative Assembly. [my emphasis]

(1) Chaque année, l'ombudsman présente à la Commission des services aux députés un état estimatif des sommes que l'Assemblée législative sera appelée à voter pour le paiement, au cours de l'exercice, des diverses charges et dépenses de son bureau.

(2) La Commission des services aux députés examine l'état estimatif présenté conformément au paragraphe (1); l'examen terminé, le président remet l'état estimatif au ministre des Finances, qui en fait la recommandation à l'Assemblée législative. [mon accent]

[93] Sections 22(1) and (2) of the *Child and Youth Advocate Act* read as follows:

(1) The Advocate must submit annually to the Members' Services Board in respect of each financial year, an estimate of the sum that will be required to be provided by the Legislature to defray the charges and expenses of the Office of the Advocate in that financial year.

(2) The Members' Services Board must review the estimate submitted and, on completion of the review, the Speaker of the Legislative Assembly must transmit the estimate to the Minister of Finance for recommendation to the Legislative Assembly.

(1) Le défenseur présente annuellement à la Commission des services aux députés un état estimatif des sommes que l'Assemblée législative sera appelée à voter pour le paiement, au cours de l'exercice, des diverses charges et dépenses de son bureau.

(2) La Commission des services aux députés examine l'état estimatif présenté et le président de l'Assemblée législative remet ensuite l'état estimatif au ministre des Finances pour recommandation à l'Assemblée législative.

[94] The interpretation of the following specific passages of ss. 9(2) of the *Ombudsman Act* and ss. 22(2) of the *Child and Youth Advocate Act* is central to

determining whether the Minister's role, as contemplated by these provisions, is purely procedural and facilitative - in that the Minister must include the Officers' estimates, as reviewed by the MSB, in an Appropriation Bill to be recommended to the Legislative Assembly; or whether they allow the Minister to process the estimates in accordance with the statutory framework of the *FAA*, which includes the Management Board's authority and mandate to consider and review the estimates to be presented to the Legislative Assembly. I note the petitioners take the position that the budgetary review process set out in the *FAA* does not apply to them.

[95] The specific passages are as follows:

... the Speaker shall transmit the estimate to the Minister of Finance for recommendation to the Legislative Assembly.

... le président remet l'état estimatif au ministre des Finances, qui en fait la recommandation à l'Assemblée législative. [ss. 9(2) of the *Ombudsman Act*];

and

... the Speaker of the Legislative Assembly must transmit the estimate to the Minister of Finance for recommendation to the Legislative Assembly.

... le président de l'Assemblée législative remet ensuite l'état estimatif au ministre des Finances pour recommandation à l'Assemblée législative. [ss. 22(2) of the *Child and Youth Advocate Act*]

## **Positions of the Parties**

### *The Petitioners*

[96] The petitioners submit that the wording of ss. 9 and 22 of the respective acts clearly reveals that the responsibility for reviewing their budget estimates is assigned to the MSB, and that the Minister's role in this process is purely procedural. The petitioners

submit that their estimates are to be transmitted to the Minister for the sole purpose of including them in the Appropriation Bill to be recommended to the Legislative Assembly.

[97] The petitioners submit that the legislative intent behind ss. 9 and 22 is to safeguard the independence of their offices by ensuring that their respective budgets are transmitted to the Legislative Assembly without interference from the executive branch of government, which is subject to investigation and review by the Ombudsman as well as review by the Child and Youth Advocate. The petitioners submit that it would be contrary to the object and intent of their enabling statutes to read the provisions at issue as granting to an executive body, editorial control over their budget estimates, which are intended to ensure their independent operations.

[98] The petitioners argue that reading ss. 9 and 22 as giving the Minister authority to edit, modify, or otherwise alter their budget estimates before recommendation to the Legislative Assembly, as suggested by the respondent, would be contrary to the stated objectives and intent of the Legislature because it would undermine the very independence that these statutory frameworks are designed to protect.

[99] The petitioners submit that the interpretation of the word “for” in the statutory phrase “the Speaker shall transmit the estimate to the Minister of Finance for recommendation to the Legislative Assembly” is central to the determination of the matter at issue. The petitioners submit that, in the absence of a definition of the word “for” in their enabling statutes or in *Black’s Law Dictionary*, the Court must turn to the ordinary dictionary meaning of the word “for”, which proposes a number of definitions. The petitioners submit that the interpretation of the word “for” that best aligns with

modern statutory interpretation principles and the remedial objectives of their enabling legislation is “with the object or purpose of”.

[100] The petitioners submit that, when incorporated and read as part of the provision, this interpretation makes clear that the Minister’s role is purely procedural; and that their estimates are to be recommended to the Legislative Assembly as transmitted - without amendment or interference from the Minister.

[101] In addition, the petitioners submit that, in keeping with the object and intent of their respective statutory frameworks, the Legislative Assembly expressly granted and reserved to the MSB, the authority to review their estimates, to the exclusion of the Minister or the Management Board. The petitioners submit that the use of the word “submit” in the expression “submit their budget estimates to the MSB for review” indicates they are subject to the MSB’s authority in the context of their budgetary process.

[102] The petitioners further submit that, if the Legislative Assembly had intended for the Minister or the Management Board to review or amend their estimates, the legislation would have reflected the intent by requiring the Speaker to “submit” or “refer” the estimates to the Minister, these words implying an evaluative or discretionary function. Instead, the deliberate use of the word “transmit” which conveys a purely procedural act, reinforces the Minister’s purely procedural role in the budgetary process.

[103] Finally, the petitioners submit that the use of the words “for recommendation” in ss. 9(2) and 22(2) should be given the same procedural meaning as the verb “to recommend” in s. 29 of the *Yukon Act*, which stipulates that the Legislative Assembly may not adopt or pass any vote, resolution address or bill for appropriation that has not



been first recommended by message of the Commissioner. As the Commissioner acts on the advice of the government, the recommendation is therefore procedural in nature.

*The Respondent*

[104] The respondent submits that the expression “for recommendation” found in ss. 9(2) and 22(2) is sufficiently broad to be read harmoniously with the authority granted to the Management Board under the *FAA*.

[105] The respondent points out that the Legislature chose to use mandatory language in ss. 9 and 22 to describe the roles of the MSB and the Speaker but did not do so for the Minister. The respondent submits the Legislature used the words “shall” in ss. 9(2) and “must” in ss. 22(2) to convey that the MSB has the statutory obligation to review the Officers’ estimates, and that the Speaker has the statutory obligation to transmit them to the Minister. However, such mandatory language is clearly absent from the broad language used in relation to the Minister’s role in the budgetary process.

[106] The respondent further submits that there is no statutory duty or obligation on the Minister to recommend any estimates directly to the Legislative Assembly because the Minister has no legal authority to do so. The respondent adds that, pursuant to s. 29 of the *Yukon Act*, the recommendation for the expenditures set out in the Appropriation Bill must come from the Commissioner, who, by Convention, will act on the advice of the Executive Council.

[107] The respondent relies on the language of several provisions in the *Parliament of Canada Act*, RSC, 1985, c. P-1, including s. 52.4(2), to argue that it was open to the Legislature to choose mandatory and unequivocal language with respect to the role of the Minister in the Officers’ budgetary approval process. Instead, the Legislature chose

to use the passive form as well as open ended language to describe the Minister's role in that process.

[108] The respondent takes the position that, in this statutory context, the expression "for recommendation" cannot be read as the petitioners suggest. The respondent submits that a perfectly consistent interpretation of the broad language of ss. 9(2) and 22(2) is that the MSB is to develop the base data for the Officers' estimates. The speaker then transmits the estimates to the Minister who then processes them in accordance with the statutory framework of the *FAA*, which includes the Management Board's authority and mandate to consider and review the estimates to be presented to the Legislative Assembly, with a recommendation from the Commissioner in the normal course, just as with every other part of the estimates that are put before the Legislative Assembly.

[109] According to the respondent, this interpretation of the broad language of the *Ombudsman Act* and the *Child and Youth Advocate Act* does not detract from the Management Board's ability to do its work as mandated by the *FAA*, which is the paramount statute, and allows both statutory processes to exist harmoniously.

### **Analysis**

[110] First, it is not disputed that pursuant to ss. 9(1) and 22(1), the petitioners have, on an annual basis, the statutory obligation to submit their respective budget estimates for the year to the MSB. The words "shall submit" are quite clear in conveying that obligation.

[111] Second, pursuant to ss. 9(2) and 22(2), the MSB has the authority and the obligation to review the estimates submitted by the Officers. There is no dispute that the

verb “review” encompasses the authority to examine the estimates and to vary or alter them, if deemed appropriate or necessary. There is no dispute that the use of the words “shall review” means that the MSB has the obligation to review the estimates once received.

[112] Third, ss. 9(2) and 22(2) are also clear about the role of the Speaker who, once the review is completed, “shall transmit” the estimates to the Minister. There is no dispute that, once the MSB has completed its review, it is the Speaker, who, as the Chair of the Committee, has the responsibility and the obligation to provide the reviewed estimates to the Minister. There is no dispute that the Speaker’s role is limited to providing the reviewed estimates to the Minister.

[113] However, once the estimates reach the stage where they are transmitted to the Minister, the wording of the provisions no longer focuses on the actions that the officials are required to take but on the purpose of the transmission. That change is brought about by the use of the preposition “for” and the noun “recommendation” rather than the use of a verb. The provisions therefore set out that the estimates are transmitted to the Minister for “the purpose of” a recommendation to the Legislative Assembly.

[114] There is no definition of the word “recommendation” in either statute. *Black’s Law Dictionary* (12<sup>th</sup> ed. 2024) defines the word recommendation as:

1. A specific piece of advice about what to do, esp. when given officially.
2. A suggestion that someone choose a particular thing or person that one thinks particularly good or meritorious. [my emphasis]

[115] In my view, it is significant that the Legislature chose to use the expression “shall transmit the estimate to the Minister for recommendation”, which suggests that what is

being transmitted or passed on to the Minister is the subject of the recommendation (advice or suggestion) rather than stronger language such as “to submit” to the Minister, which implies an evaluative or discretionary function; and which is the language that the Legislature chose to use with respect to the role of the MSB. I note the MSB, an all-party committee of the Legislative Assembly, is the only entity specifically vested with the authority “to review” the petitioners’ budget estimates under ss. 9(2) or 22(2).

[116] Based on the above, I am of the view that the expressions “the Speaker shall transmit the estimate to the Minister for recommendation to the Legislative Assembly” (s 9(2)) and “ the Speaker of the Legislative Assembly must transmit the estimate to the Minister of Finance for recommendation to the Legislative Assembly” (s 22(2)) convey the meaning that the role of the Minister in relation to the petitioners’ estimates, is purely procedural and does not encompass the authority to examine and modify the estimates.

[117] I note that the French version of ss. 22(2) of the *Child and Youth Advocate Act* uses the same language and structure as the English version. However, the French version of ss. 9(2) of the *Ombudsman Act*, is structured differently, and, in my view, makes the procedural role of the Minister even clearer. The words “l’examen terminé, le président remet l’état estimatif au ministre des Finances, qui en fait la recommandation à l’Assemblée législative” [my emphasis] specifically direct the Minister to recommend the very estimates he receives from the Speaker to the Legislative Assembly. The wording of the French version does not leave any room for the Minister or any other entity to examine and modify or alter the estimates prior to their recommendation to the Legislative Assembly. It is not the verb tense that is indicative of the Minister’s role in that sentence but the structure of the sentence.

[118] This interpretation, which imparts only a procedural role to the Minister, is also informed by and in keeping with the object of the petitioners' enabling statutes – which is to establish offices of independent Officers of the Legislative Assembly whose mandates include oversight functions over the executive branch of government – and the legislative intent to protect the independence of the operations of the petitioners' respective offices.

[119] Also, while I agree with the respondent that it is the Commissioner of Yukon, not the Minister, who is vested with the statutory authority to recommend the expenditures, the word “recommendation” is nonetheless closely tied to the Minister's responsibility to table the Appropriation Bill in the Legislative Assembly. The procedural role of the Minister under ss. 9(2) and 22(2) translates into including the estimates, as reviewed by the MSB, in the Appropriation Bill which must be recommended by message of the Commissioner for approval by the Legislative Assembly.

## **THE BUDGETARY PROCESS UNDER THE *FAA***

### **Positions of the Parties**

#### *The Petitioners*

[120] The petitioners argue that, while the money they receive may flow through the application of the *FAA*, their budget estimates are not subject to Management Board's review because the *FAA* does not apply to them. In addition, the petitioners submit that the budgetary provisions of their respecting enabling statutes can be read harmoniously with the *FAA* therefore not triggering the application of the paramountcy clause.

[121] The petitioners submit that the *FAA* does not apply to them because, as Officers of the Legislative Assembly with a responsibility of holding the executive branch

accountable, they are not part of the executive branch of government, or the public service, nor are they covered by the definition of “government” under the *FAA*. The petitioners submit that their financial independence is protected by their enabling statutes and the Legislative Assembly’s express delegation of budgetary oversight authority to the MSB. The petitioners submit it would be inconsistent with their statutory roles and mandates to subject their financial operations to the executive branch they are tasked with scrutinizing.

[122] The petitioners further submit that the *FAA* only governs government departments and agencies that fall under the executive control. The petitioners submit that they are not departments of the Government of Yukon, nor are they agencies, commissions, boards, corporations, or any part of the Government of Yukon, as contemplated in or by the *FAA*. The petitioners argue that there is nothing in the language or wording of the *FAA* that purports to extend its authority over the Legislative or the Judicial branches of government. The petitioners submit that, as Officers of the Legislative Assembly, they are part of the Legislative Branch and, therefore, not subject to the financial control mechanisms of the *FAA*.

#### *The Respondent*

[123] The respondent submits that the Management Board has the statutory authority to review and revise the petitioners’ budget estimates because the provisions of the *FAA* govern the process for preparing the budget estimates for all expenditures that will be presented by the Minister before the Legislative Assembly.

[124] The respondent submits that the petitioners’ argument confuses the recipient of funding and the source of funding. The respondent submits that many recipients of

government funding are not part of the government or the public service, but the payments made to them constitute nonetheless government expenditures.

[125] The respondent submits that the *FAA* applies to all government expenditures, no matter who the ultimate recipient of the money appropriated out of the CRF may be.

Under the *Yukon Act* and the *FAA*, any amount to be appropriated from the CRF as a result of a vote in the Legislative Assembly is a disbursement to which the *FAA* applies.

[126] The respondent submits that, in the event of a conflict between the *FAA* and another territorial statute, the *FAA*'s paramountcy provision is engaged. As neither the *Ombudsman Act* nor the *Child and Youth Advocate Act* contain an express provision that their relevant budgetary provisions apply despite the *FAA*, the latter must prevail.

### **Analysis**

[127] The *FAA* provides the financial administration framework for the government of Yukon. It sets out, among other things, the authority and functions of the Management Board and the Minister. It contains provisions that govern the preparation, content and distribution of the annual public accounts that must be prepared pursuant to s. 30 of the *Yukon Act* and include the consolidated financial statements for the Government of Yukon. The *FAA* also contains provisions regarding the Government of Yukon's revenues, expenditures, assets and liabilities.

[128] In my view, and for the reasons that follow, the position advanced by the petitioners that the *FAA* does not apply to them or can be read harmoniously with their enabling legislation is not supported by the wording of the provisions and overall structure of the *FAA*.

[129] Section 6 of the *FAA* provides that the Minister is responsible for, among other things: “(a) the management and administration of the consolidated revenue fund; and (b) the supervision of the revenues and expenditures of the government.”

[130] The CRF, as per s. 28 of the *Yukon Act*, is composed of all public moneys and revenue over which the Legislature has the power of appropriation (see the definition of “Consolidated Revenue Fund” under the *FAA*).

[131] As stated earlier, the Management Board is a committee of the Executive Council which consists of the Minister of Finance, as Chair, and two Ministers appointed by the Commissioner in Executive Council. The Management Board is granted with expansive authority under s. 4 of the *FAA*.

[132] In particular, s. 4(1)(c) provides that the Management Board is responsible, among other things, for all government financial management and control of revenue, disbursements and assets.

[133] In addition, s. 4(2) specifically provides that “the estimates of revenue and expenditure for the government for each financial year shall be prepared in a form directed by the management board for presentation to the Legislative Assembly by the Minister.” [my emphasis]

[134] The word “government” is defined broadly in the *FAA*. Government means the Government of Yukon and includes, but is not limited to, the departments of the government and its agencies, commissions, boards, or corporations.

[135] Section 8(4)(b) of the *FAA*, provides that the public accounts for each financial year shall contain: the statements of the revenues and expenditures of the government showing the results of operations for the financial year and pursuant to s. 8(4)(f) any



other information as may be necessary to show the financial position of the government respecting the financial year. The Yukon Public Accounts for 2023-24 were filed in this matter. Of note, the expenditures of the Office of the Ombudsman and the Child and Youth Advocate Office are included in the public accounts and specifically listed under the expenses of the Government of Yukon. Clearly, under s. 8 of the *FAA*, the budgets of the petitioners are considered as expenditures of the government.

[136] Furthermore, s. 34 of the *FAA* grants the Minister the authority to demand repayment from any person who has received money from the government for a specific purpose and has not applied it to that purpose within the time or in the manner required. Section 36(1) of the *FAA* provides that money received by the government as a refund or repayment of an expenditure or advance shall be included in the unexpended balance of the vote or fund from which it was paid.

[137] During their submissions, and in support of their position that the *FAA* does not apply to their budgetary processes, the petitioners indicated that, unlike departments or executive entities, they do not have to return their unexpended annual budgets to the government. However, the 2023-24 public accounts identify specific amounts from the Office of the Ombudsman and the Child and Youth Advocate Office as recoveries, demonstrating again that the provisions of the *FAA* (ss. 34 and 36) apply to their budget.

[138] I now turn to s. 17 of the *FAA*, which is the first provision that appears under Part 3 of the *FAA* entitled Expenditure (I note that s. 9 of the *Interpretation Act* provides that headings identifying the Parts or Divisions of an Act, form a part of the Act). Section 17, read alongside the *Yukon Act*, reveals that any amount to be appropriated

from the CRF as a result of a vote in the Legislative Assembly is considered a disbursement (in other words a payment out of the CRF) under the *FAA*. Section 17 provides:

(1) No payment shall be made at any time from the consolidated revenue fund for any purpose unless a provision of this or another Act authorizes the payment to be made for that purpose at that time.

(2) A vote does not authorize any payment to be made

(a) in excess of the amount specified in the vote;

(b) for any purpose not within the general purposes of the vote;

...

[139] The word vote is defined under the *FAA* as: “part of an appropriation Act identified as a vote and authorizing the payment of a specified amount from the consolidated revenue fund for specified purposes” [my emphasis]. As evidenced by the *Second Appropriation Act 2023-24, SY 2023, c 17*, which was filed in this matter, the budget estimates of the Office of the Ombudsman and of the Child and Youth Advocate Office are each identified as a separate vote in an Appropriation Act and, as such, are therefore captured by the application of the *FAA*.

[140] Finally, s. 21 of the *FAA* is also significant in revealing the breath of the authority of the Management Board over votes and, as a result, the petitioners’ budgets under the *FAA*. Section 21 provides that the Management Board may, by directive, control or limit in a number of ways payments from votes.

[141] From this review and going back to the authority of the Management Board under the *FAA*, as set out in s. 4 of the *FAA*, I find that the petitioners’ budget estimates, as

government expenditures to be paid out of the CRF, fall under the authority of the Management Board pursuant to para. 4(1)(c) of the *FAA*, which provides that the Management Board is responsible, among other things, for all “government financial management and control of revenue, disbursements and assets.” [my emphasis]

[142] In addition, I find that, pursuant to ss. 4(2) of the *FAA*, the Management Board has the authority to review and modify or alter the petitioners’ budget estimates, as government expenditures, prior to their inclusion in an Appropriation Bill. Subsection 4(2) specifically provides that “the estimates of revenue and expenditure for the government for each financial year shall be prepared in a form directed by the management board for presentation to the Legislative Assembly by the Minister” [my emphasis].

[143] This result clearly conflicts with the budgetary approval processes set out in the *Ombudsman Act* and the *Child and Youth Advocate Act*, which confer to the MSB sole authority to review the petitioners’ estimates prior to their inclusion in an Appropriation Bill for recommendation to the Legislative Assembly. This conflict triggers the application of the *FAA*’s strong paramountcy clause. Subsection 2(1) of the *FAA* provides that:

## **2 Application of the Act**

(1) If there is a conflict between this Act and any other Act of the Legislature enacted before or after this section comes into force, this Act prevails unless the other Act contains an express provision that it, or the relevant provision of it, applies despite the *Financial Administration Act*.

[144] As there are no express provisions in the *Ombudsman Act* or the *Child and Youth Advocate Act* that their budgetary provisions apply despite the *FAA*, the

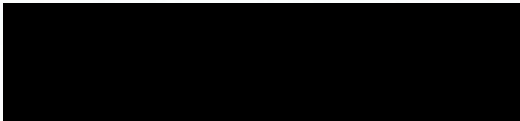
provisions of the *FAA* must prevail to the extent of this conflict. This means that once the MSB has completed its review of the petitioners' estimates, and the reviewed estimates are transmitted to the Minister, the Management Board has the authority to review and alter or modify the estimates prior to their inclusion by the Minister in an Appropriation Bill to be tabled before the Legislative Assembly.

**CONCLUSION**

[145] As a result of my findings on the issue of statutory interpretation, the petition is dismissed.

[146] However, I would like to add that, while the executive has an obligation to act in good faith, the Ombudsman and the Child and Youth Advocate have put forward legitimate concerns regarding their ability to fulfill their mandates as independent Officers of the Legislative Assembly if their budget estimates are submitted to the review and approval of the executive branch of government they are tasked with scrutinizing. However, considering my decision, it is for the Legislative Assembly to consider those concerns along, potentially, with other relevant public policy considerations to determine what actions, if any, are warranted on their part.

[147] Finally, the issue of costs of this petition may be discussed at a Case Management Conference, if necessary.

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CAMPBELL J.