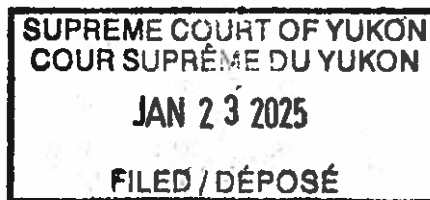


Form 2  
(Rules 10, 20 and 64(15))

S.C. No. 25 - A0014

**SUPREME COURT OF YUKON**



Between:

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

Petitioners

And

The Minister of Finance (Government of Yukon)

Respondent

**PETITION**

THIS IS THE PETITION OF:

The Yukon Ombudsman, Public Interest Disclosure Commissioner,  
and Information and Privacy Commissioner

c/o Kelly Hjorth  
3162 Third Avenue  
Whitehorse, Yukon Y1A 1G3

THIS IS ALSO THE PETITION OF:

The Child and Youth Advocate

c/o Shaunagh Stikeman  
Stikeman Law  
303B Hawkins Street  
Whitehorse, Yukon Y1A 1X5

ON NOTICE TO:

The Minister of Finance (Government of Yukon)  
Minister's Office  
PO Box 2703  
Whitehorse, Yukon Y1A 2C6

If you have interests that are affected by the order sought TAKE NOTICE that the petitioners apply to court for the relief set out in this petition.

### APPEARANCE REQUIRED BY RESPONDENT

IF YOU WISH TO BE NOTIFIED of any further proceedings, YOU MUST GIVE NOTICE of your intention by filing an APPEARANCE in Form 9 in this court within the time for appearance and YOU MUST ALSO DELIVER a copy of the filed Appearance to the petitioners' address for delivery, which is set out in this Petition. YOU OR YOUR LAWYER may file the APPEARANCE. You may obtain an APPEARANCE form at the registry or [www.yukoncourts.ca](http://www.yukoncourts.ca).

IF YOU FAIL to file the APPEARANCE within the proper time for appearance, the petitioners may continue this application without further notice to you.

### TIME FOR APPEARANCE

Where this Petition is served on a person in Yukon, the time for appearance by that person is 7 days from the service (not including the day of service).

Where this Petition is served on a person outside Yukon, the time for appearance by that person is 21 days from the date of service (not including the day of service) in the case of a person residing anywhere within Canada, 28 days from the date of service (not including the day of service) in the case of a person residing in the United States of America, and 42 days from the date of service (not including the day of service) in the case of a person residing elsewhere.

OR

If the time for appearance has been set by order of the court, within that time.

### TIME FOR RESPONSE

IF YOU WISH TO RESPOND to the Petition, you must, on or before 8 days from the end of the time for appearance provided for above,

- (a) deliver to the petitioners
  - (i) 1 copy of a Response in Form 11, and
  - (ii) 1 copy of each affidavit in Form 59 on which you intend to rely at the hearing, and
- (b) deliver to every other person given notice
  - (i) 1 copy of a Response in Form 11, and
  - (ii) 1 copy of each affidavit in Form 59 on which you intend to rely at the hearing.

(1) The address of the registry is:

The Law Courts  
2134 Second Avenue  
Whitehorse, Yukon Y1A 5H6  
Telephone: (867) 667-5937  
Fax: (867) 393-6212

(2) The Petitioners, Yukon Ombudsman, Public Interest Disclosure Commissioner, and Information and Privacy Commissioner, ADDRESS FOR DELIVERY (**Required:** (per Rules 4(10) and (11)) **must be a residential address OR business address AND postal address in Yukon**) is:

Yukon Ombudsman  
c/o Kelly Hjorth  
3162 Third Avenue  
Whitehorse, Yukon Y1A 1G3  
Telephone: (867) 332-4977  
Email address: Kelly.Hjorth@yukonombudsman.ca

(3) The Petitioner, Child and Youth Advocate, ADDRESS FOR DELIVERY (**Required:** (per Rules 4(10) and (11)) **must be a residential address OR business address AND postal address in Yukon**) is:

Child and Youth Advocate  
c/o Shaunagh Stikeman  
Stikeman Law  
303B Hawkins Street  
Whitehorse, Yukon Y1A 1X5  
Telephone: (867) 336-1514  
Email address: stikeman@stikemanlaw.ca

(4) The name and office address of the Petitioners, Yukon Ombudsman, Public Interest Disclosure Commissioner, lawyer is:

KELLY HJORTH  
3162 Third Avenue  
Whitehorse, Yukon Y1A 1G3

(5) The name and office address of the Petitioner, Child and Youth Advocate, lawyer is:

SHAUNAGH STIKEMAN  
303B Hawkins Street  
Whitehorse, Yukon Y1A 1X5

## PETITION

The Petitioners apply for:

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 *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. Costs; and
4. Such further and other relief as counsel and this Honourable Court deems just.

The Petitioners will rely on:

1. *Access to Information and Protection of Privacy Act*, SY 2018, c. 9.
2. *Annotated Standing Orders of the Yukon Legislative Assembly*, May 5, 2021.
3. *Child and Youth Advocate Act*, SY 2002, c. 1.
4. *Elections Act*, RSY 2002, c. 63.
5. *Financial Administration Act*, RSY 2002, c. 87
6. *Interpretation Act*, RSY 2002, c. 125.
7. *Judicature Act*, RSY 2002, c. 128.
8. *Motion No. 8 – Appointments to the Members' Services Board*, May 13, 2021.
9. *Ombudsman Act*, SY 2002, c. 163.
10. *Public Interest and Disclosure of Wrongdoing Act*, SY 2014, c. 19.
11. *Rules of Court*, YOIC 2009.65, and any amendments thereto.
12. *Yukon Act*, S.C. 2002, c. 7.

The affidavits of Jason Pedlar #1, sworn January 22, 2025, and Annette King #1, sworn January 22, 2025, will be relied on at the hearing, copies of which accompany this Petition as per Rule 10(2.1).

The facts on which this Petition is based are as follows.

## **SUMMARY OF ISSUES**

1. The Minister of Finance (the "Minister") has interfered in the budget approval process for the Yukon Ombudsman (the "Ombudsman"), Public Interest Disclosure Commissioner (the "PIDC"), Information and Privacy Commissioner (the "IPC"), and the Child and Youth Advocate (the "Advocate") in a manner that is ultra vires the Minister's authority under the *Financial Administration Act*, RSY 2002, c. 87 ("*Financial Administration Act*") and is contrary to the *Ombudsman Act*, SY 2002, c. 163 ("*Ombudsman Act*") and the *Child and Youth Advocate Act*, SY 2002, c. 1 ("*Child and Youth Advocate Act*").
2. The Minister's interference undermines the statutory framework established by the *Ombudsman Act* and the *Child and Youth Advocate Act* intended to uphold the independence and integrity of the Ombudsman, PIDC, IPC, and the Advocate (together, the "Officers of the Legislative Assembly"). The Minister's interference also undermines the role of the all-party committee of the Legislative Assembly – the Members' Services Board (the "MSB") – in reviewing and approving the budget estimates of the Officers of the Legislative Assembly.
3. The Minister's unlawful intervention raises a significant danger of real or perceived political interference, the erosion of public confidence and the compromise of independent oversight mechanisms which the Officers of the Legislative Assembly are intended to provide in the Yukon.
4. A writ of mandamus is necessary to preserve the independence and impartiality of the Officers of the Legislative Assembly by requiring the Minister to submit the budget estimates of the Ombudsman and the Advocate, as reviewed by the MSB and transmitted by the Speaker, to the Legislative Assembly.
5. A declaration is necessary to resolve a substantive and live legal issue in dispute, and would have the practical purpose of protecting the Officers of the Legislative Assembly from further potential political interference.

## **ROLE OF THE OMBUDSMAN**

6. The Ombudsman is an independent officer of the Legislative Assembly, appointed pursuant to s. 2 of the *Ombudsman Act*.
7. The PIDC as well as the IPC, are offices which are *de facto* held by the Ombudsman. Any reference to the Ombudsman will also include, by reference, the PIDC and the IPC.

8. The mandate of the Ombudsman is to provide an independent, impartial means by which public complaints about matters of administration concerning authorities that are subject to the *Ombudsman Act* can be investigated, with the goal of promoting fairness, openness, and accountability in public administration.
9. This mandate is reflected in s. 11(1) of the *Ombudsman Act*, which states:

11(1) It is the function and duty of the Ombudsman to investigate on a complaint any decision or recommendation made, including a recommendation made to a Minister, or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in their or its personal capacity, in or by any authority, or by any officer, employee, or member thereof in the exercise of any power or function conferred on them by any enactment.
10. In addition, the Legislative Assembly or any of its committees, a municipality, or a Yukon First Nation government, may at any time refer a matter to the Ombudsman for investigation and report: *Ombudsman Act*, ss. 11(4)-(5).
11. Once the Ombudsman has completed an investigation, if they believe that one or more grounds in s. 23 of the *Ombudsman Act* have been substantiated, then the Ombudsman shall report their opinion and the reasons for it to the authority and may make the recommendations the Ombudsman considers appropriate.
12. Having made recommendations, the Ombudsman may, pursuant to s. 24 of the *Ombudsman Act*, request that the authority notify them, within a specified period of time, what steps have been taken or are proposed to be taken to give effect to the recommendations.
13. In the event an authority fails to take action within a reasonable time, or takes action that the Ombudsman believes to be inadequate or inappropriate with respect to a recommendation, then the Ombudsman may, after considering any reasons given by the authority, submit a report of the matter to the Commissioner in Executive Council and, after that, may make any report to the Yukon Legislative Assembly respecting the matter the Ombudsman considers appropriate.
14. The independence and impartiality of the Ombudsman are foundational to its mandate and its authority. The Ombudsman's ability to investigate complaints and promote fairness, openness, and accountability in public administration depends on its freedom from any real or perceived political interference.
15. This independence ensures that the Ombudsman can act without fear of reprisal or undue influence, maintaining the trust of the public and those it serves. Any erosion of this independence risks undermining the Ombudsman's critical role as a safeguard of good governance and protector of individual rights within the administrative process.

## **ROLE OF THE PUBLIC INTEREST DISCLOSURE COMMISSIONER**

16. The PIDC is an independent officer of the Legislative Assembly, appointed pursuant to s. 45(1) of the *Public Interest and Disclosure of Wrongdoing Act* ("PIDWA").
17. The mandate of the PIDC is to provide an independent, impartial means by which employees (as defined in the *PIDWA*) of the public service can make complaints of wrongdoing (as defined in the *PIDWA*) or retaliation (as defined in the *PIDWA*) to be investigated, with the goal of promoting fairness, openness, and accountability in public administration.
18. Once the PIDC has completed an investigation, if they believe that one or more grounds in the *PIDWA* have been substantiated, then the PIDC shall report their opinion and the reasons for it to the Public Entity and may make the recommendations the PIDC considers appropriate.
19. Having made recommendations, the PIDC may, pursuant to s. 24 of the *PIDWA*, request that the authority notify them, within a specified period of time, what steps have been taken or are proposed to be taken to give effect to the recommendations.
20. In the event a Public Entity fails to take action within a reasonable time, or takes action that the PIDC believes to be inadequate or inappropriate with respect to a recommendation, then the PIDC may, after considering any reasons given by the Public Entity, submit a report of the matter to the responsible Minister as the PIDC considers appropriate.
21. The independence and impartiality of the PIDC is foundational to its mandate and its authority. The PIDC's ability to investigate complaints and promote fairness, openness, and accountability in public administration depends on its freedom from any real or perceived political interference.
22. This independence ensures that the PIDC can act without fear of reprisal or undue influence, maintaining the trust of the public and those it serves. Any erosion of this independence risks undermining the PIDC's critical role as a safeguard of good governance and protector of individual rights within the administrative process.

## **ROLE OF THE INFORMATION AND PRIVACY COMMISSIONER**

23. The IPC is an independent officer of the Legislative Assembly, appointed pursuant to s. 110 of the *Access to Information and Protection of Privacy Act* ("ATIPPA").
24. The mandate of the IPC is to provide an independent, impartial means by which public complaints about matters of access to information and breaches of privacy that are subject to the *ATIPPA* can be investigated, with the goal of promoting fairness, openness, and accountability in public administration.

25. Once the IPC has completed an investigation, then the IPC shall report their findings of fact and law and the reasons for them to the Public Body and may make the recommendations the IPC considers appropriate.
26. Having received recommendations, the Public Body must, pursuant to s. 104 of the *ATIPPA*, respond to the recommendations of the IPC by either accepting or rejecting them. Should a Public Body not respond to the recommendations of the IPC within the allotted time, it is deemed to have rejected the recommendation(s).
27. In the event a Public Body decides to reject the recommendations of the IPC, a complainant may seek judicial review of the decisions pursuant to s.105 of the *ATIPPA*.
28. The independence and impartiality of the IPC are foundational to its mandate and its authority. The IPC's ability to investigate complaints and promote fairness, openness, and accountability in public administration depends on its freedom from any real or perceived political interference.
29. This independence ensures that the IPC can act without fear of reprisal or undue influence, maintaining the trust of the public and those it serves. Any erosion of this independence risks undermining the IPC's critical role as a safeguard of good governance and protector of individual rights within the administrative process.

## **ROLE OF THE CHILD AND YOUTH ADVOCATE**

30. The Advocate is an independent officer of the Legislative Assembly, appointed pursuant to s. 4 of the *Child and Youth Advocate Act*. Section s. 4(2) of the *Child and Youth Advocate Act* states, "[t]he Advocate... is not subject to the direction or control of the Members of the Legislative Assembly, the Executive Council, or the public service." This provision affirms the Advocate's operational and administrative independence from government.
31. The primary role of the Advocate, as outlined in s. 11 of the *Child and Youth Advocate Act*, is to support and guide children and youth who are receiving, or are eligible to receive, government services. This includes providing information and advice to help them effectively access services, ensuring their views and preferences are heard and considered in relation to the services, and advocating for their rights and interests throughout the process.
32. The secondary role of the Advocate, as reflected in s. 12 of the *Child and Youth Advocate Act*, is to review and provide advice in respect of policy or systemic issues arising from government services that children and youth are eligible to receive.
33. The third role of the Advocate, as reflected in s. 15 of the *Child and Youth Advocate Act*, s. 15(1), is, 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.

34. The *Child and Youth Advocate Act*, s. 23, grants the Advocate the power to compel disclosure of any information that is in the custody or control of a public body, school board, or First Nation service authority if the Advocate determines the information is necessary to enable them to perform their functions and duties.
35. Having provided advice to the public body, First Nation service authority or school board with respect to a designated service, the Advocate may, pursuant to s. 21 of the *Child and Youth Advocate Act*, request that the authority advise them, within a specified period of time, of the steps that have been, or are proposed to be taken, to give effect to the Advocate's advice. If no steps have been taken, or are proposed to be taken, the Advocate must be provided with reasons for not following their advice.
36. The independence and impartiality of the Advocate are essential to fulfilling the mandate of promoting and protecting the rights, interests, and well-being of children and youth.
37. This independence ensures that the Advocate can act without fear of reprisal or undue influence, maintaining the trust of the public and those it serves. Any erosion of this independence risks undermining the Advocate's critical role in protecting and promoting the rights of Yukon children and youth.
38. The Advocate's role in ensuring that their voices are heard, and their access to government services is supported, requires a clear separation from political influence. Without this independence, the Advocate's ability to effectively advocate for systemic improvements and to hold government agencies accountable would be compromised, thereby undermining the trust and confidence of children, youth, and the public in the Advocate's vital work. Protecting the Advocate from political interference is therefore paramount to maintaining its integrity and ensuring its effectiveness in advancing the best interests of children and youth.

## **LEGISLATIVE FRAMEWORK**

### **A. Members' Services Board**

39. The MSB is an all-party committee of the Legislative Assembly which is responsible for all matters of financial and administrative policy affecting the Legislative Assembly. The multi-party structure of the MSB promotes impartiality in its decisions.

40. Among the many roles served by the MSB, it has the responsibility of reviewing and approving budget estimates for the Officers of the Legislative Assembly, ensuring that these Officers have the resources necessary to fulfill their mandates while balancing fiscal responsibility for the Legislative Assembly.

41. The *Annotated Standing Orders of the Yukon Legislative Assembly* (the “*Standing Orders*”), Standing Order 45(2), describes the MSB as follows:

“The Members’ Serviced Board (MSB) is responsible for all matters of financial and administrative policy affecting the Assembly. MSB has statutory responsibilities prescribed in the... *Elections Act*... the *Ombudsman Act*, the *Access to Information and Protection of Privacy Act*... and the *Child and Youth Advocate Act*... MSB also reviews estimates for the Legislative Assembly (including the Conflict of Interest Commission), Elections Yukon, the Office of the Ombudsman, the Conflict of Interest Commission, and the Child and Youth Advocate Office before they are included in the appropriation bill that the government presents to the Assembly.”

42. The authority of the MSB to consider the budget submission of the House Officer was confirmed in the Legislative Assembly in *Motion No. 8 – Appointments to the Members’ Services Board*, May 13, 2021 (“*Motion 8*”). *Motion 8* confirmed the appointment of the Members of the Legislative Assembly to the MSB, as well as the responsibility of MSB as including the following:

“THAT the board consider:

(1) budget submissions for the following votes:

(a) Vote 1 – Yukon Legislative Assembly, including the Conflict of Interest Commission;

(b) Vote 23 – Office of the Ombudsman, including the Information and Privacy Commissioner and the Public Interest Disclosure Commissioner;

(c) Vote 24 - Elections Office; and

(d) Vote 26 – Child and Youth Advocate Office;

...

THAT the board fulfill its statutory responsibilities, including those in the *Legislative Assembly Act*, the *Legislative Assembly Retirement Allowances Act, 2007*, the *Elections Act*, the *Conflict of Interest (Members and Ministers) Act*, the *Ombudsman Act*, the *Cabinet and Caucus Employees Act*, and the *Child and Youth Advocate Act*’

43. The MSB plays a critical role in upholding the independence and effectiveness of the Officers of the Legislative Assembly by serving as the sole body responsible for reviewing their budget estimates. This responsibility ensures that the Officers of the Legislative Assembly have the necessary resources to fulfill their legislated mandates without undue political influence or interference. By safeguarding the

financial and administrative independence of these Offices, the MSB reinforces their ability to promote accountability, fairness, and transparency in public administration.

## **B. Ombudsman Act**

44. On Thursday, December 8, 1994, the second reading of the *Ombudsman Act* was introduced to the Legislative Assembly.
45. During their description of the nascent office, the Hon. Mr. Ostashek stated the following:

“The budget of the office [of the Ombudsman] will be reviewed by the Speaker of the Legislature [later amended to the MSB] and approved by the Legislature. It will not be a budget under any department that may be the focus of an ombudsman investigation.”
46. The statutory framework of the *Ombudsman Act* assigns responsibility for reviewing the Ombudsman’s budget to the MSB.
47. Specifically, the *Ombudsman Act*, s. 9(1), requires the Ombudsman to “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 Ombudsman in that financial year.”
48. Pursuant to the *Ombudsman Act*, s. 9(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.”
49. The legislative intent and statutory framework of the *Ombudsman Act* make it clear that the budgetary process for the Office of the Ombudsman was deliberately designed to safeguard the office's independence. By assigning the responsibility for reviewing the budget estimates to the MSB, and requiring the Speaker to transmit those estimates to the Minister for recommendation without alteration, the *Ombudsman Act* ensures that the Ombudsman’s financial autonomy is protected from interference by any department or entity that could be subject to investigation. This structure reinforces the Ombudsman’s ability to function impartially, maintain public trust, and fulfill its mandate of promoting fairness, openness, and accountability in public administration.

## **C. Child and Youth Advocate Act**

50. *Bill No. 70 Child and Youth Advocate Act* was first introduced in 2009. In the explanatory notes provided with the *Bill*, it indicated that for s. 22 of the draft *Child and Youth Advocate Act*, the financing provisions are modeled on those in the *Ombudsman Act*.

51. On March 30, 2009, the second reading of the *Child and Youth Advocate Act* was introduced to the Legislative Assembly.
52. During their description of the creation of the Office, the Hon. Mr. Hart stated the following:
 

“The advocate will be accountable to the Legislative Assembly and will submit financial reports and annual report...”
53. On April 30, 2009, before the Committee of the Whole, the Hon. Mr. Hart introduced Bill No. 70, *Child and Youth Advocate Act*. In his address, the Hon. Mr. Hart stated that, “The advocate will provide quarterly financial reports and annual reports to the Legislative Assembly.”
54. In language almost identical to that of the *Ombudsman Act*, the statutory framework of the *Child and Youth Advocate Act* assigns responsibility for reviewing the Advocate’s budget to the MSB.
55. Specifically, the *Child and Youth Advocate Act*, s. 22(1), requires the Advocate to “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.”
56. Section 22(5) of the *Child and Youth Advocate Act* requires the Advocate to exercise fiscal responsibility in creating their budget estimates.
57. Pursuant to the *Child and Youth Advocate Act*, s. 22(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.”
58. The *Child and Youth Advocate Act* was explicitly modeled after the *Ombudsman Act* to ensure the Advocate’s independence and accountability to the Legislative Assembly. The statutory requirement for the MSB to review the Advocate’s budget, followed by the Speaker’s transmission of the approved estimates to the Minister for recommendation, underscores the Legislature’s intent to shield the Advocate’s office from political or departmental interference. This carefully designed framework ensures that the Advocate has the financial autonomy necessary to fulfill its mandate of promoting and protecting the rights and interests of children and youth while maintaining public confidence in the office’s impartiality and effectiveness.

#### **D. Yukon Act**

59. The *Yukon Act*, S.C. 2002, c. 7 (“*Yukon Act*”), is federal legislation which establishes a procedural requirement for the appropriation of public revenue. Specifically, s. 29 of the *Yukon Act* states,

## Recommendation of Commissioner

29 It is not lawful for the Legislative Assembly to adopt or pass any vote, resolution, address or bill for the appropriation of any part of the public revenue, or of any tax, for any purpose that has not been first recommended to the Legislative Assembly by message of the Commissioner, in the session in which the vote, resolution, address or bill is proposed.”

60. In this context, the term “recommended” refers to a procedural function requiring the Commissioner to introduce proposed spending of public monies to the Legislative Assembly. In this regard, s. 29 of the *Yukon Act* ensures that government spending adheres to the customary constitutional process in a parliamentary democracy where the expenditures proposed by the executive branch – the Commissioner – must be scrutinized and approved by the Legislative Assembly before those funds can be appropriated.
61. Section 29 of the *Yukon Act* also serves the purpose of ensuring that a recommendation of the Commissioner to the Legislative Assembly is the *only* means by which public funds may be appropriated. In other words, neither the MSB nor a House Officer may recommend their budget estimate directly to the Legislative Assembly for the appropriation of public funds.
62. While s. 29 of the *Yukon Act* governs the process for the appropriation of public funds generally for the operation of Yukon Government, it does not grant the Commissioner any specific authority to interfere with the budget estimates of the Officers of the Legislative Assembly. Rather, it establishes the procedural mechanism for all proposals for expenditure of public funds to be tabled, scrutinized and voted on in the Legislative Assembly.

### **E. Financial Administration Act**

63. The *Financial Administration Act* establishes overarching financial management principles for the Yukon Government.
64. The *Financial Administration Act*, s. 2(1), holds that in the event of a conflict between laws, the *Financial Administration Act* prevails over any other legislation unless that legislation contains an express provision that it applies despite the *Financial Administration Act*. In the absence of a conflict between laws, the *Financial Administration Act* is not paramount to other legislation.
65. The *Financial Administration Act* does not include any express or implied language granting the Minister the authority to interfere in the budgeting process specified under the *Ombudsman Act* or the *Child and Youth Advocate*.

66. The *Financial Administration Act* does provide the basis for the authority of the Minister and Management Board in respect of managing government finances. The Management Board is a committee of the Executive Council which consists of the Minister, who is the Chair, and two other ministers appointed by the Commissioner.
67. The functions of the Management Board are defined in s. 4(1) of the *Financial Administration Act* as follows:
- “4(1) The management board shall act as a committee of the Executive Council in matters relating to
- (a) accounting policies and practices of the government, including the form and content of the public accounts;
  - (b) government management practices and systems;
  - (c) government financial management and control of revenue, disbursements and assets;
  - (d) evaluation of government programs as to economy, efficiency, and effectiveness;
  - (e) the management, control, and direction of the public service, including organization and staff establishments;
  - (f) internal audit; and
  - (g) other matters referred to it by the Executive Council.
- (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.”
68. The term “government” is defined in s. 1 of the *Financial Administration Act* to mean “the Government of the Yukon and includes every department of the government”.
69. The term “department” is defined in s. 1 of the *Financial Administration Act* to mean “any department of the government and includes any agency, commission, board, or corporation of the government”.
70. Neither the Ombudsman nor the Advocate are a “government” or a “department” and thus not subject to s. 4(1)(a)-(d) or 4(2) of the *Financial Administration Act*.
71. Neither the Ombudsman nor the Advocate are “public service” and thus not subject to s. 4(1)(e) of the *Financial Administration Act*.
72. By virtue of s. 9(2) of the *Ombudsman Act* and s. 23(2) of the *Child and Youth Advocate Act*, the Speaker must “transmit” the Officers of the Legislative Assembly’ budget estimates to the Minister for recommendation to the Legislative Assembly. Thus, the budget estimates of Officers of the Legislative Assembly are not “referred to the Executive Council” within the meaning of s. 4(1)(g) of the *Financial Administration Act*.

73. The *Financial Administration Act*, s. 6(1)(d), designates the Minister as responsible for “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.” The direction of the financial affairs of the Officers of the Legislative Assembly are assigned to the MSB by virtue of s. 9 of the *Ombudsman Act*, s. 22 of the *Child and Youth Advocate Act* and the *Standing Orders*. Thus, the financial affairs of the Officers of the Legislative Assembly are not within the scope of the Minister’s residual authority in s. 6(1)(d) of the *Financial Administration Act*.
74. Lastly, the *Financial Administration Act*, s. 21, permits Management Board to regulate “expenditures among allotments, programs, and projects”. The operations of the Officers of the Legislative Assembly are not allotments, programs or projects and thus not subject to s. 21 of the *Financial Administration Act*.

## **BACKGROUND FACTS**

75. Historically, the Officers of the Legislative Assembly submit their budget estimates to MSB, which reviews and transmits them to the Minister for recommendation to the Legislative Assembly.
76. The MSB is required by *Standing Order 45(2)* to be chaired by the current Speaker of the House, a position which is currently held by the Honourable Jeremy Harper (the “Speaker”).
77. On September 16, 2024, the 2025/2026 budget estimates the Officers of the Legislative Assembly were submitted to MSB for review.
78. That same day, the MSB met to review, *inter alia*, the budget estimates submitted by the Officers of the Legislative Assembly.
79. On September 16, 2024, the MSB, via Justin Gorczyca, Director of Administration, Finance & Systems, communicated to the Officers of the Legislative Assembly that the budget estimates of the Ombudsman (the “Ombudsman Estimate”) and budget estimate of the Advocate (the “Advocate Estimate”) were successfully reviewed by MSB and that they would be transmitted to the Minister.
80. On October 9, 2024, the Speaker, as Chair of the MSB, transmitted to the Minister the MSB-reviewed Ombudsman Estimate and Advocate Estimate.
81. On November 8, 2024, Brian Park, an analyst for the Management Board, responded to the Speaker’s letter of October 8, 2024, via an email. The email contained, *inter alia*, attachments purporting to be Ombudsman Estimate and Advocate Estimate with significant revisions directed by Management Board.
82. On November 13, 2024, Justin Gorczyca wrote an email in response to the November 8, 2024 email of Brian Park.

83. In their email, Justin Gorczyca outlined the role of the MSB in reviewing and approving the budgets of Officers of the Legislative Assembly. The email went on to detail excerpts from a number of different pieces of legislation, including s. 9 of the *Ombudsman Act* and s. 22 of the *Child and Youth Advocate Act*, to emphasize the statutory process for reviewing budgets for the Officers of the Legislative Assembly by the MSB. Further, Justin Gorczyca outlined that s. 29 of the *Yukon Act* and the *Financial Administration Act* are not inconsistent with the *Ombudsman Act* or the *Child and Youth Advocate Act*.
84. Finally, Justin Gorczyca's email called for, *inter alia*, the Ombudsman Estimate and Advocate Estimate to be recommended to the Legislative Assembly as reviewed by the MSB. It concluded that any recommendation that is different from the estimates transmitted by the MSB to the Minister would be contrary to the *Yukon Act*, the *Financial Administration Act*, the *Ombudsman Act*, *Child and Youth Advocate Act* and *Motion 8*. It would also undermine the independence of the Legislative Assembly and individual Officers of the Legislative Assembly.
85. On November 13, 2024, Maxime Mazoulec, Assistant Deputy Minister of the Department of Finance, responded to Justin Gorczyca's email to indicate that the Management Board was confident that it has the authority to further modify budget requests from the MSB.
86. On November 27, 2024, both the Ombudsman and the Advocate provided letters to the Speaker in respect of Management Board's interference in the budget process and emphasized the risks to the independence and effectiveness of their Offices.
87. On December 19, 2024, the Speaker formally communicated these concerns raised by the Officers of the Legislative Assembly to the Minister in a letter, highlighting the erosion of MSB's authority, the implications for governance and the risk of political interference in the work of independent Officers of the Legislative Assembly.
88. On December 27, 2024, the Minister provided a letter to the Speaker which stated that they disagreed with the Speaker's assertion that MSB has the final say in respect of amounts to be included in the estimates for the Ombudsman and the Advocate, as well as for Elections Yukon. The Minister is of the view that the Management Board is authorized by s. 4(2) of the *Financial Administration Act* to determine the amounts that the Government of Yukon will ultimately place before the Legislative Assembly as its estimates, and this authority is not affected by *Ombudsman Act* or the *Child and Youth Advocate Act*.
89. On January 9, 2025, the Ombudsman sent a letter to the Minister requesting a written commitment that they will comply with the provisions of the *Ombudsman Act* and recommend the Ombudsman Estimate to the Legislative Assembly as transmitted by the MSB. The commitment was requested by January 17, 2025.



90. On January 13, 2025, the Advocate sent a letter to the Minister requesting a written commitment that they will comply with the provisions of the *Child and Youth Advocate Act* and recommend the Advocate Estimate to the Legislative Assembly as transmitted by the MSB. The commitment was requested by January 20, 2025.
91. On January 17 and 20, 2025, the Minister provided letters to the Ombudsman and Advocate, respectively, stating that, “[a]ccording 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.”

## **GROUNDINGS FOR REQUESTED WRIT OF MANDAMUS**

92. The Petitioners seek an order including a writ of mandamus requiring the Minister to recommend the unaltered Ombudsman Estimate and the Advocate Estimate to the Legislative Assembly in accordance with *Ombudsman Act* and the *Child and Youth Advocate Act*.
93. The Minister has a statutory obligation to submit the budget estimates in respect of the Officers of the Legislative Assembly as reviewed by the MSB to the Legislative Assembly without interference or amendment. This obligation arises from the statutory framework governing the independence and financial administration of the Officers of the Legislative Assembly pursuant to the *Ombudsman Act*, the *Child and Youth Advocate Act*, and the *Standing Orders*.
94. The MSB is an all-party committee of the Legislative Assembly with the ultimate responsibility for reviewing budget estimates for Officers of the Legislative Assembly. This exclusive authority ensures that Officers of the Legislative Assembly maintain the independence necessary to fulfill their mandates without political interference, while balancing the need to responsibly manage the expenditure of public funds.
95. Contrary to this protective legal framework, the Minister has communicated that the Management Board has the authority to review and amend the budget estimates reviewed by the MSB prior to their submission to the Legislative Assembly. This position is ultra vires the powers of both the Minister and the Management Board under the *Financial Administration Act*. Neither the *Financial Administration Act*, nor any other statutory authority, grants the Management Board the power to interfere with or override the MSB’s exclusive jurisdiction over these budget estimates.
96. The *Ombudsman Act* and the *Child and Youth Advocate Act* expressly establish the independence of these Offices, recognizing their vital roles in promoting fairness, transparency, and accountability in public administration. Allowing the Minister or the Management Board to review or alter budget estimates reviewed by the MSB would fundamentally undermine this independence and erode public trust in these essential offices.

97. The *Standing Orders* of the Legislative Assembly further reinforce the MSB's authority, clearly outlining its responsibility for reviewing budget estimates for Officers of the Legislative Assembly before their inclusion in the appropriation bill. The Minister's actions directly contravene these established procedures.
98. The Minister's refusal to submit the budget estimates as reviewed by the MSB constitutes a failure to perform a mandatory duty required by law. This failure threatens the independence and effectiveness of the Ombudsman and the Advocate, jeopardizing their ability to fulfill their legislated mandates.
99. Given the Minister's stated position and the resulting impasse, there is no other adequate or effective remedy available to ensure compliance with the law. A writ of mandamus is therefore necessary to compel the Minister to submit the budget estimates as reviewed by the MSB to the Legislative Assembly without interference.
100. The issuance of this writ is essential to preserve the independence of the Ombudsman and the Advocate, uphold the authority of the MSB, and ensure adherence to the constitutional principles of responsible government and financial accountability in the Yukon.

#### **GROUNDS FOR REQUESTED DECLARATION**

101. The Petitioners seek an order including a declaration that the Minister is compelled to recommend the budget estimates of Officers of the Legislative Assembly, as transmitted by the Speaker, to the Legislative Assembly.
102. The Petitioners submit that a declaration of this nature would resolve a substantive and live legal issue in dispute and would serve the practical purpose of ensuring the Ombudsman and the Advocate are protected from real or perceived political interference in their budgetary process.
103. The Minister is legally compelled to recommend to the Legislative Assembly the budget estimates of the Officers of the Legislative Assembly as transmitted by the Speaker following their review by the MSB. This obligation arises from the statutory framework governing the independence of the Officers of the Legislative Assembly and the *Standing Orders* of the Yukon Legislative Assembly.
104. The MSB's mandate, as established by its *Standing Orders*, includes the sole responsibility for reviewing the budget estimates of the Officers of the Legislative Assembly. This ensures that Officers of the Legislative Assembly have the financial resources necessary to fulfill their mandates free from external influence or interference. Once reviewed by the MSB, the estimates are transmitted by the Speaker to the Minister for inclusion in the appropriation bill.

105. Section 9(1) of the *Ombudsman Act* and section 22(1) of the *Child and Youth Advocate Act* explicitly require that the Ombudsman and Advocate "submit" their budget estimates to the MSB for "review". The use of the term "submit" implies a hierarchical relationship, where the Officers of the Legislative Assembly are subject to the authority of the MSB in this context.
106. In clear contrast, section 9(2) of the *Ombudsman Act* and section 22(2) of the *Child and Youth Advocate Act* employ the term "transmit" to describe the Speaker's action in forwarding the MSB-reviewed budget estimates to the Minister. Unlike "submit," the term "transmit" conveys a procedural function – ensuring the budget estimates are delivered to the Minister for recommendation to the Legislative Assembly.
107. If the legislature had intended for the Minister or Management Board to have further authority to review or amend the Officers' budget estimates, sections 9(2) and 22(2) would have specified that the Speaker must "submit" or "refer" the estimates to the Minister, rather than "transmit" them.
108. Moreover, the inclusion of the term "recommend" in s. 9(2) of the *Ombudsman Act* and s. 22(2) of the *Child and Youth Advocate Act* does not provide the Minister with the authority to interfere in the budget estimates. Rather, the inclusion of term "recommend" in this context is a reference to s. 29 of the *Yukon Act*, which requires that all appropriations of public revenue be recommended to the Legislative Assembly by the Commissioner. The term "recommend," in this context, refers only to a procedural function requiring the Commissioner, through the Minister, to transmit the reviewed budget estimates to the Legislative Assembly.
109. This recommendation does not grant the Minister or the Commissioner the authority to review, amend, or interfere with the estimates reviewed by the MSB. Such interference would be ultra vires the Minister's authority and contrary to the principles of parliamentary governance.
110. The *Financial Administration Act* does not grant the Minister the authority to review, amend, or interfere with budget estimates reviewed by the MSB for the Officers of the Legislative Assembly. The *Financial Administration Act* is a general statute governing financial administration and does not supersede the specific statutory provisions in the *Ombudsman Act* and the *Child and Youth Advocate Act*, which explicitly require the Minister to recommend the budget estimates as approved. Any attempt to rely on the *Financial Administration Act* to justify interference is a misinterpretation of its purpose and would conflict with the specialized statutory framework protecting the independence of the Officers of the Legislative Assembly.
111. The role of the Minister with respect to the budget estimates of Officers of the Legislative Assembly is purely procedural. The Minister must act as a conduit between the MSB and the Legislative Assembly, facilitating the appropriate presentation of the estimates without alteration or delay. Any deviation from this role undermines the independence of the MSB and the Officers of the Legislative


Assembly, violating the statutory and procedural safeguards designed to protect their autonomy.

112. Failure to respect this procedural obligation risks significant harm to the independent operations of the Officers of the Legislative Assembly. These Offices play a critical role in promoting accountability, fairness, and transparency in government administration. By refusing to recommend the budget estimates as reviewed by the MSB, the Minister jeopardizes the ability of these offices to effectively carry out their mandates, eroding public trust in their independence and impartiality.
113. A declaration is necessary to clarify and affirm the Minister's legal obligations in this matter, ensuring adherence to the procedural and statutory requirements governing the approval and presentation of the House Officer budget estimates. Such a declaration will not only resolve the current impasse but also prevent future disputes, reinforcing the independence of Officers of the Legislative Assembly and the integrity of the budgetary process.
114. The issuance of this declaration is essential to uphold the principles of responsible government, protect the independence of Officers of the Legislative Assembly, and ensure the Legislative Assembly receives the budget estimates as reviewed by the MSB in accordance with established statutory and procedural requirements.

The Petitioners estimate that the Petition will take one (1) day.

Dated: January 23, 2025

  
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Kelly Hjorth  
Lawyer for the Ombudsman/PIDC/IPC

  
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