



**OFFICE OF THE ETHICS COMMISSIONER
PROVINCE OF ALBERTA**

**Report
of the Investigation
under the *Conflicts of Interest Act***

by

Hon. Marguerite Trussler, Q.C.,

Ethics Commissioner

into allegations involving

**Premier Jason Kenney- MLA, Calgary- Lougheed,
Minister Doug Schweitzer- MLA, Calgary- Elbow,
Minister Leela Aheer- MLA, Chestermere- Strathmore
Minister Josephine Pon- MLA, Calgary- Beddington,
Associate Minister Jason Luan- MLA, Calgary- Foothills,
Member Joseph Schow- MLA, Cardston- Siksika,
Member Jordan Walker- MLA, Sherwood Park,
Member Peter Singh- MLA, Calgary- East,
Members of the UCP Caucus at large**

April 27, 2020

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Introduction

On December 11, 2019, I received a request from Rachel Notley, Leader of Her Majesty's Loyal Opposition, to conduct an investigation relating to Bill 22, the *Reform of Agencies, Boards and Commissions and Government Enterprises Act*, 2019. In her cover letter she stated:

It is our view that several individuals or groups within the United Conservative Party caucus breached the Conflicts of Interest Act in relation to the firing of the Election Commissioner through Bill 22, the Reform of Agencies, Boards and Commissions and Government Enterprises Act 2019 ("Bill 22"), which passed the legislature on November 21, 2019.

In particular, these groups include caucus members involved in the investigations being conducted by the Election Commissioner, caucus members who benefit materially from the success of the UCP, caucus members who have fiduciary relationships with the UCP, caucus members who were candidates in the UCP leadership race, and caucus members who are direct associates of individuals who are under investigation by the former Election Commissioner. Each of these individuals or groups present with different interests that should have prohibited them from influencing either the development or passage of Bill 22....

A submission accompanied her letter, which is attached as appendix A.

I also received approximately 85 e-mails from the public on Bill 22, which is an unprecedented number for my office.

Background

Bill 22, the *Reform of Agencies, Boards and Commissions and Government Enterprises Act*, was introduced into the Legislature on November 18, 2019. It was a very long bill that dealt with numerous entities, not just the Office of the Election Commissioner. One part of the Bill eliminates the Office of the Election Commissioner as an independent Office of the Legislature and moves the position of Election Commissioner under the Chief Electoral Officer, another independent Office of the Legislature, where it previously was located. All ongoing investigations were to be continued.

It is of interest to explore the history of the former Election Commissioner, Lorne Gibson, with the Government of Alberta. On May 9, 2006, the Standing Committee on Legislative Offices recommended that Lorne Gibson be appointed Chief Electoral Officer. A general election took place during Mr. Gibson's tenure. There were some difficulties with the conduct of the election with blame being placed on both Mr. Gibson and the Government, depending who was asked.

On February 18, 2009, the Standing Committee on Legislative Offices moved that a motion be introduced in the Assembly to establish a special select committee to search for a candidate for the position of Chief Electoral Officer. The practical result of that motion was that Mr. Gibson was not re-appointed for a second term. The Chief Electoral Officer has to be re-appointed after every election pursuant to s. 3(3) of the *Election Act*, R.S.A. 2000, c. E-1. Otherwise the appointment expires.

No current sitting UCP Member was a Member of the Legislative Assembly at that time. Only the Leader of the Opposition, Rachel Notley, was a Member of the Assembly in 2009.

Mr. Gibson commenced an action against the Government in the Court of Queen's Bench. The action was dismissed [*Lorne Gibson v. Her Majesty the Queen in Right of Alberta and the Legislative Assembly Office*, 2013 ABQB 695] on the basis that not renewing a term employment contract does not amount to a "dismissal" from employment.

An election took place in May of 2015. The Progressive Conservative government was defeated and the NDP formed the government.

On December 4, 2017, the Government of Premier Rachel Notley introduced Bill 32, an *Act to Strengthen and Protect Democracy in Alberta*. This Bill created the independent legislative office of the Election Commissioner. The Opposition tried, without success, to delay the passage of the Bill. Amongst other things, the UCP felt it created unnecessary duplication of Legislative Offices.

On December 20, 2017, the Standing Committee on Legislative Offices met to begin the recruitment process for an Election Commissioner. The Opposition again complained about the rush and also raised the issue of overlap between offices. On February 15, 2018, the Committee met to consider the candidates who had applied. Deliberations continued in March and April.

On April 5, 2018, a motion was introduced at the Committee to appoint Lorne Gibson as Election Commissioner. The four members of the UCP on the Committee, namely, Members Aheer, Pitt, van Dijken and Gill, spoke out against the appointment. The arguments included the earlier controversy with Mr. Gibson, his lawsuit against the Government, a lack of confidence in his ability and the fact that the position was redundant. All four members voted against the motion and also produced a minority report. The report read, in part:

So perhaps it wasn't surprising that when it came time to select a candidate that instead of an openness to hear the concerns from the Official Opposition, government members used their majority to confirm a candidate that while qualified, has a long and adversarial history with the Legislative Assembly here in Alberta. We felt there were a number of other strong candidates, yet the government members chose a candidate that did not have the unanimous support of the committee.

On April 10, 2018, a motion was introduced in the Legislative Assembly to appoint Mr. Gibson as Election Commissioner. The motion was debated in the Assembly over four days in May with 11 members of the Opposition speaking against the appointment. Finally, the Government introduced a motion to limit debate. The motion was carried with the nine Opposition members present voting against the appointment.

There was an election in May of 2019 and the UCP thereafter formed the government.

With this background, it was no great surprise, to those who closely observe the goings on of the Legislative Assembly, when Bill 22 was introduced to eliminate the Office of the Election Commissioner and to return its function to the Chief Electoral Officer where it was prior to the appointment of the Election Commissioner in 2018.

One of the major issues was the timing of Bill 22 given that the Election Commissioner was still carrying out investigations into the UCP leadership campaign and the last general election.

Scope and authority of the Ethics Commissioner under the Act

As I have stated in the past, it is important to understand the jurisdiction of the Ethics Commissioner. The Office of the Ethics Commissioner is created by the *Conflicts of Interest Act*, R.S.A. 2000, c. C-23. The Act sets out the obligations of Ministers and Members, as well as the parameters of the jurisdiction of the Ethics Commissioner. The Ethics Commissioner has no power beyond that given by the Act. Notwithstanding some broad-reaching philosophical provisions in the preamble to the Act, the scope of the Act is narrow, in that it only deals with the private interests of Members. The object of the Act is to make sure that no Member, Member's partner or dependent child obtains a personal financial or other benefit as a result of being a Member through such things as insider knowledge, influence or inappropriate gifts, to name a few examples. It also prevents Members from improperly benefiting other family members and friends. The Act does not deal with moral integrity.

The authority for conducting an investigation is found under part 5 of the Act. The sections relevant for the purposes of this investigation are as follows:

s. 24(1) Any person may request, in writing, that the Ethics Commissioner investigate any matter respecting an alleged breach or contravention of this Act.

(2) A request under subsection (1) must

(a) be signed by the person making it and must identify that person to the satisfaction of the Ethics Commissioner, and

(b) set out sufficient particulars of the matter to which the request relates for an investigation to be commenced.

(3) A Member may request, in writing, that the Ethics Commissioner investigate any matter respecting an alleged breach of this Act by the Member.

(4) The Legislative Assembly may, by resolution, request that the Ethics Commissioner investigate any matter respecting an alleged breach or contravention of this Act by a Member or former Member.

(5) The Executive Council may request that the Ethics Commissioner investigate any matter respecting an alleged breach or contravention of this Act by a Minister or former Minister.

(6) Where a matter has been referred to the Ethics Commissioner under subsection (1), (3) or (4), neither the Legislative Assembly nor a committee of the Assembly shall inquire into the matter.

s. 25(1) On receiving a request under section 24 or where the Ethics Commissioner has reason to believe that an individual has acted or is acting in contravention of advice, recommendations or directions or any conditions of any approval given by the Ethics Commissioner, and on giving reasonable notice to that individual, the Ethics Commissioner may conduct an investigation.

(2) An individual whose conduct is subject to an investigation under this Part shall co-operate with the investigation.

(3) An investigation under this section shall not be commenced more than 2 years after the date on which the alleged breach or contravention occurred.

(4) On commencing an investigation under subsection (1), the Ethics Commissioner may inform the Speaker of the Legislative Assembly of

a) the fact that an investigation has been commenced,

(b) if a request was received under section 24, the identity of the person who made the request,

(c) the name of the person who is the subject of the investigation, and

(d) the matter to which the investigation relates.

(5) For the purpose of conducting an investigation, the Ethics Commissioner may

(a) in the same manner and to the same extent as a justice of the Court of Queen's Bench,

(i) summon and enforce the attendance of individuals before the Ethics Commissioner and compel them to give oral or written evidence on oath, and

(ii) compel persons to produce any documents or other things that the Ethics Commissioner considers relevant to the investigation, and

(b) administer oaths and receive and accept information, whether or not it would be admissible as evidence in a court of law.

(6) The Ethics Commissioner shall immediately suspend an investigation under this section if the Ethics Commissioner discovers that the subject-matter of the investigation is also the subject-matter of an investigation by a law enforcement agency to determine whether an offence under this Act or any other enactment of Alberta or under an Act of the Parliament of Canada has been committed, or that a charge has been laid with respect to that subject-matter.

7) The Ethics Commissioner may not continue an investigation under this section until any investigation or charge referred to in subsection (6) has been finally disposed of.

(8) If, for any reason, the Ethics Commissioner determines that he or she should not act in respect of any particular investigation, the Ethics Commissioner may appoint an ethics commissioner or equivalent officer of another jurisdiction in Canada as a special Ethics Commissioner, to exercise the powers and perform the duties of the Ethics Commissioner in respect of that investigation.

(9) The Ethics Commissioner may re-investigate an alleged breach or contravention in respect of which the Ethics Commissioner's findings have already been reported under this section only if, in the Ethics Commissioner's opinion, there are new facts that on their face might change the original findings.

(10) The Ethics Commissioner may refuse to investigate or may cease an investigation if the Ethics Commissioner is of the opinion that

(a) a request under section 24(1) is frivolous or vexatious or was not made in good faith, or

(b) there are no or insufficient grounds to warrant an investigation or the continuation of an investigation.

(11) If the Ethics Commissioner refuses to investigate or ceases to investigate an alleged breach or contravention, suspends an investigation of an alleged breach or contravention or refuses to reinvestigate an alleged breach or contravention, the Ethics Commissioner shall so inform

(a) the individual against whom the allegation was made,

(b) the Speaker of the Legislative Assembly, and

(c) the person who made the request under section 24.

(12) Where the request was made under section 24(1), (3) or (4), the Ethics Commissioner shall report the Ethics Commissioner's findings to the Speaker of the Legislative Assembly.

(13) The Ethics Commissioner, before reporting the Ethics Commissioner's findings to the Speaker of the Legislative Assembly under subsection (12),

(a) shall provide a copy of the report to the individual against whom the allegation was made, and

(b) may, in the case of an allegation made against a Member, former Member or former Minister, provide a copy of the report to the leader in the Legislative Assembly of the political party to which the Member, former Member or former Minister belongs.

(14) Where the request was made under section 24(5), the Ethics Commissioner shall report the Ethics Commissioner's findings to the President of the Executive Council.

(15) If the Ethics Commissioner is of the opinion

(a) that a request made by a Member under section 24(1) was frivolous or vexatious or was not made in good faith, or

(b) that a request was made under section 24(1) by a person at the request of a Member and that the request was frivolous or vexatious or was not made in good faith,

the Ethics Commissioner may state that opinion in a report to the Speaker of the Legislative Assembly.

(16) The Speaker of the Legislative Assembly shall lay a report referred to in subsection (15) before the Legislative Assembly and the Legislative Assembly, after considering the report, may

(a) find the Member referred to in subsection (15) in contempt of the Legislative Assembly pursuant to section 10 of the Legislative Assembly Act, or

(b) order the Member referred to in subsection (15) to pay to the individual against whom the allegation was made the costs of the proceeding incurred by the individual,

or both.

Relevant provisions of legislation for this investigation

The relevant provisions of the *Conflicts of Interest Act* for this investigation are:

s. 2(1) A Member breaches this Act if the Member takes part in a decision in the course of carrying out the Member's office or powers knowing that the decision might further a private interest of the Member, a person directly associated with the Member or the Member's minor or adult child.

(2) Where a matter for decision in which a Member has reasonable grounds to believe that the Member, the Member's minor or adult child or a person directly associated with the Member has a private interest is before a meeting of Executive Council or a committee of the Executive Council or the Legislative Assembly or a committee appointed by resolution of the Legislative Assembly, the Member must, if present at the meeting, declare that interest and must withdraw from the meeting without voting on or participating in the consideration of the matter.

(3) A Member who fails to comply with subsection (2) breaches this Act.

...

(5) In the case of a meeting of the Legislative Assembly or a committee of it, where a Member has complied with subsection (2), the Clerk of the Legislative Assembly or the secretary of the meeting shall file with the Ethics Commissioner, as soon as practicable, a copy of the deliberations and proceedings, as recorded in Alberta Hansard, of the meeting from which the Member withdrew.

...

s.3 A Member breaches this Act if the Member uses the Member's office or powers to influence or seek to influence a decision to be made by or on behalf of the Crown to further a private interest of the Member, a person directly associated with the Member or the Member's minor child or to improperly further another person's private interest.

Also relevant are s.153.03(1) of the *Election Act* and s.5.2(1) of the *Election Finances and Contributions Disclosure Act*:

153.03(1) Before beginning the duties of the office, the Election Commissioner shall take an oath to perform the duties of the office faithfully and impartially and, except as provided in the Act or the *Election Finances and Contributions Disclosure Act*, not to disclose any information received by the Office of the Election Commissioner under this or any other Act.

5.2(1) Except as otherwise provided in subsection (2) and (3), the Chief Electoral Officer, the Election Commissioner, any former Chief Electoral Officer, any former Election Commissioner, every person who is or was employed or engaged by the Office of the Chief Electoral Officer to carry out the duties of the Chief Electoral Officer and every person who is or was employed by the Office of the Election Commissioner to carry out the duties of an Election Commissioner shall maintain the confidentiality of all information, complaints and allegations that come to their knowledge.

Bill 22 preserved these provisions of the *Election Act* and the *Election Finances and Contributions Disclosure Act* with respect to confidentiality. The words "the Office of" are deleted from s.153.03(1), but the prohibition on disclosure remains.

Use of preamble

The preamble to the Act reads:

WHEREAS the ethical conduct of elected officials is expected in democracies;

WHEREAS Members of the Legislative Assembly can serve Albertans most effectively from a spectrum of occupations and continue to participate actively in the community;

WHEREAS Members of the Legislative Assembly are expected to perform their duties and arrange their private affairs in a manner that promotes public confidence and trust in the integrity of each Member, that maintains the Assembly's dignity and that justifies the respect in which society holds the Assembly and its Members: and

WHEREAS Members of the Legislative Assembly, in reconciling their duties of office and their private interests, are expected to act with integrity and impartiality;

WHEREAS Ministers and their staff must avoid conduct that violates the public trust or creates an appearance of impropriety;

WHEREAS the senior officials, members and employees of public agencies are expected to act with integrity and impartiality and must avoid conduct that violates the public trust or creates a conflict of interest or apparent conflict of interest; and

WHEREAS the adoption of clear and consistent conflict of interest rules, post-employment restrictions and reporting duties will promote these aims;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

While the preamble to the Act contains laudable ideals, it is general in nature and as a principle of statutory interpretation it can only be used to assist in interpreting the sections of the Act. By itself, it has no legislative authority.

As a result, in making a determination with respect this investigation, the preamble to the *Conflicts of Interest Act* can only be used to explain the statute's context and purpose and to assist in interpreting the substantive provisions of the statute, particularly where there is ambiguity. The preamble does not create independent binding provisions, nor does it override specific substantive provisions of the statute [*Midland Railway v. Young*, 1893 CarswellOnt 26 SCC , 22 S.C. R. 190, *R. v. Kostynyk*, 1944 CarswellMan 46 MBCA, [1945] 1 D.L.R. 103, *United States v. McVey*, [1992] 3 S.C.R. 475 SCC, *AG v. Prince Ernest Augustus of Hanover* (1956), [1957] A.C. 436 (U.K.H.L), see also s.12(1) of the *Interpretation Act*, R.S.A.2000,c. I-8].

Investigative process

At the commencement of the investigation, I requested documents from the Clerk of the Legislative Assembly and from the Executive Council. Both co-operated fully and provided me all relevant documents within the time frame given. I also received some limited information, within the narrow scope that I requested and was permitted by law, from the office of the Chief Electoral Officer.

I interviewed, in person and under oath, every member of the UCP caucus except for one, who was absent due to a family matter and provided a statutory declaration instead.

Facts

The proposal to eliminate the Office of the Election Commissioner and to transfer back to the Chief Electoral Officer the jurisdiction of the Election Commissioner was presented to Cabinet on October 29, 2019, by Minister Schweitzer.

There was no vote taken at Cabinet and there appears to have been little or no discussion. It then went to Legislative Review Committee on October 31 and November 7, 2019. There was some evolution of the original proposal but nothing untoward that would cause any concern. The proposal was again before Cabinet on November 15, 2019, again with no vote and little or no discussion. Sometime during this time frame, it was drafted and became part of Bill 22. As previously noted, Bill 22 provided for many other substantial changes aside from the provisions relating to the Office of the Election Commissioner.

When Bill 22 went to caucus, there was a presentation and some clarifying questions were asked, but there was no vote.

It is interesting to note, based on information on the website of the former Office of the Election Commissioner, that in 2019 the Election Commissioner gave reprimands and imposed penalties for activities that occurred in 2018 against 120 individuals, organizations and corporations. Of the 120, six were Members of the Legislative Assembly. Three were from the NDP and three were from the UCP. Former NDP Ministers Miranda, Malkinson and McCuaig-Boyd received reprimands for over contributions of \$100 or less.

Minister Dreeshan received a reprimand for an over contribution under \$100. Member Allard received an administrative penalty for an over contribution of \$130.81. Minister Aheer received an administrative penalty for an over contribution of \$1,000 but an application for judicial review and an appeal with respect to both the decision and the penalty have been filed in the Court of Queen's Bench. The matter has not yet been heard.

Fifty out of the 62 members of the UCP caucus never had any interaction whatsoever with the Election Commissioner.

There were nine other UCP Members who had some interaction with the Election Commissioner before the Bill was introduced. All were for insignificant matters. They range from being cleared of any wrongdoing, to a letter of caution, to a reprimand, to a small administrative penalty as noted above. The only large penalty was that assessed against Minister Aheer.

Two of the Members swore under oath, and I believe them that they were not aware of any ongoing investigation.

The Election Commissioner has a statutory prohibition on releasing information except as provided in the *Election Act* and the *Election Finances and Contributions Disclosure Act* (cited above). I have power under s.25 (5) of the *Conflicts of Interest Act* to obtain limited information from the Election Commissioner and the Chief Electoral Officer for the purposes of conducting a full investigation. However, I am not prepared to disclose information that would otherwise not be discloseable information where it is not relevant to the findings in this report.

I am not publicizing the names of anyone the Election Commissioner has not published, except where relevant to my findings in this investigation.

There were only two UCP Members who had ongoing matters with the Election Commissioner while the Bill was before Cabinet and the Assembly that need examination.

One is Minister Aheer who received an administrative penalty which was published on the Election Commissioner's website and which is under appeal and judicial review.

The other is Member Peter Singh. Just prior to the Bill being introduced, Member Singh's Chief Financial Officer was advised that the Election Commissioner's staff wanted to discuss some of Member Singh's campaign expenses with him. As a result Member Singh decided he should not vote, and according to Hansard, did not do so.

The reasons for supporting the provisions of Bill 22 by members of the UCP caucus relating to the Office of the Election Commissioner covered a wide range. They went from "no reason not to support", to "supporting a government bill", to "moving things back to the way they were", to "getting rid of a redundancy or duplication" to "lessening confusion for candidates", to "lessening expense" and to "making the Election Commissioner a public servant reporting to the Chief Electoral Officer so that person would not be a political appointment".

Findings

a. Investigations by RCMP

Section 25(6) of the *Conflicts of Interest Act* forbids the Ethics Commissioner from carrying out an investigation if the subject matter of the investigation is also the subject matter of an investigation by a law enforcement agency. The section reads:

s.25(6) The Ethics Commissioner shall immediately suspend an investigation under the section if the Ethics Commissioner discovers that the subject-matter of the investigation is also the subject-matter of an investigation by a law enforcement agency to determine whether an offence under this Act or any other enactment of

Alberta or under an Act of the Parliament of Canada has been committed, or that a charge has been laid with respect to that subject-matter.

If the RCMP is conducting an investigation, I am not able to investigate why a number of Members of the Legislative Assembly may have been interviewed by the RCMP.

If a person has been interviewed by the RCMP, it does not necessarily mean that person is being investigated by the RCMP or the Election Commissioner. Ministers Panda and Pon, Associate Minister Luan, Members Walker and Schow have never had any interaction with the Election Commissioner. They have never been contacted or been under investigation. Ministers Aheer and Schweitzer both had dealings with the Election Commissioner. Minister Schweitzer's dealings were inconsequential and merited no action by the Election Commissioner. Minister Aheer's dealings have been outlined above. Neither of their dealings would merit an RCMP investigation.

Just because someone is being interviewed by the RCMP does not mean that person is in breach of the *Conflicts of Interest Act*. In fact, one of those interviewed happened to arrive at a place where someone else, who is not a Member, was being interviewed. The RCMP decided at that point to ask that Member a few questions as well.

There is no significance to the fact these seven Members may have been interviewed by the RCMP for the purposes of this investigation.

b. Rapid passage of Bill 22

The Legislative Assembly is responsible for determining its schedule. It is not for anyone else to determine. If the majority of Members want to proceed quickly with legislation nothing can be done about it by anyone who is not a Member of the Legislative Assembly. The Government appears to have wanted to expedite the passage of Bill 22 to the extent of limiting debate. It would be pure speculation to say what the motivation was. There were a number of significant changes to a number of pieces of existing legislation in the Bill. The Opposition resisted limiting debate but ultimately the majority did so. As an aside, it is interesting to note that when the Office of the Election Commissioner was set up and when the Election Commissioner was chosen, it was the UCP Members who were complaining about the speed of passage of the bill and motion and the limitation on debate.

c. Private interest

i. Direct personal interest

As Member Notley stated in her letter a Member "cannot advance a public interest no matter how righteous if that public interest would further their private interest".

It is for me to ascertain if any Member had a private interest in the Bill and contravened s. 2 or s.3 of the Act.

A Member has to know that the Member is under investigation. There were two Members who participated to a limited extent not knowing they had an outstanding matter with the Election Commissioner. As a result, neither of these Members contravened the Act.

There are only two Members whose positions need to be considered. Minister Aheer had a penalty imposed for an over contribution of \$1,000. On June 18, 2019, the Office of the Election Commissioner suspended the investigation but neglected to withdraw the penalty. An application for judicial review and an appeal were filed on June 20, 2019. The Office of the Election Commissioner asked that the matter set for August, 2019 be adjourned. The facts are similar to those set out in *Rumpel v. Alberta (Election Commissioner)*, 2019 ABQB 938.

This matter is before the Court of Queen's Bench and, therefore, is no longer within the jurisdiction of the Election Commissioner. While it may have been prudent of Minister Aheer, from a public perception point of view, to refrain from speaking and voting on Bill 22, she is not in breach of the Act as the matter was no longer before the Election Commissioner.

Of more concern is Member Singh. He found out a few days before the vote from his Chief Financial Officer that the Election Commissioner wanted to discuss some aspect of his campaign expenses with him. He, therefore, had a private interest in the Bill, which he recognized. As a result, he chose not to vote. The fact that he did not vote can be ascertained as a result of the fact that all of the votes of each Member at each stage of passage were recorded. However, he did not take the extra step required by the Act which is set out in s. 2(2) of the Act:

s. 2(2) Where a matter for decision in which a Member has a reasonable grounds to believe that the Member, the Member's minor or adult child or a person directly associated with the Member has a private interest is before ...the legislative Assembly...,the Member must, if present at the meeting, declare that interest and must withdraw from the meeting without voting on or participating in the consideration of the matter.

Although I am satisfied that Member Singh was not familiar with the provision requiring him to formally recuse himself, ignorance of the provision is not an excuse.

In my view, Member Singh contravened s. 2(2) of the Act.

ii. Interest of the UCP

Member Notley alleged in her request for an investigation that all UCP Members who participated in the consideration of or voted on Bill 22 breached section 2 of the Act because they took part in a decision in the course of carrying out their office or powers knowing that the decision might further their own private interest. She

also alleged that UCP Members who spoke in favour of Bill 22 breached section 3 of the Act by using their office or powers to influence a decision to be made by or on behalf of the Crown to further their own private interest.

These allegations were based on her suggestion that Premier Kenney has a private interest in the success of the UCP because he is the UCP leader. These allegations also were based on her suggestion that all UCP caucus members have a private interest in the outcome of any investigation by the Election Commissioner into any another member of the UCP caucus, such as Member Singh. In other words, it was submitted that the interests of a Member's political party, and those of the Member's fellow caucus members, are a private interest of the Member himself or herself due to political connection. Member Notley's request submitted that this was because "within the context of partisan politics, a loss of public confidence in one member of the party can carry significant impact on the success of the party as a whole, including with respect to fundraising, volunteerism, and public support necessary to establish re-election" and because "UCP caucus members must be approved as candidates by the Party and local constituency associations and Party endorsement is crucial to securing an election victory".

She also submitted that there was an "even closer proximate relationship" between Member Jason Nixon and Member Singh due to political connection because Member Nixon sponsored the motion to appoint Member Singh to the Standing Committee on the Alberta Heritage Savings Trust Fund.

In my view, a Member does not have a private interest in the outcome of an investigation by the Election Commissioner into another Member in the same political party. The approach suggested in Member Notley's request for an investigation cannot be supported for a number of reasons.

First, partisan political advantage is too remote and speculative to be considered the "private interest" of any individual Member. For example, it is highly speculative to conclude that a matter affecting one Member would impact the future electoral prospects of the Member's political party and other Members in that party.

Second, a "private interest" is an interest that is particular and personal to a Member. An interest in the future electoral success of oneself or one's political party is neither particular nor personal to a Member. Rather, it is an interest shared by most, if not all, Members of the Legislative Assembly.

Third, re-election as a Member entails receipt of the salary and benefits of a Member. The Act, in s.1(1)(g)(i)(C), expressly excludes an interest in a matter that concerns the remuneration or benefits of a Member from the concept of "private interest". Just as Members can vote on Members' salaries and benefits without breaching the Act, they should be able to pursue that salary and benefits through re-election without breaching the Act.

Fourth, following the argument that partisan political interests are included in a Member's "private interest" to its logical conclusion would mean that nearly everything that a Member does is furthering their private interest and a breach of

the Act. This is because almost every activity carried out by a Member has an element of shaping their public image, acceptance and support, which ultimately could affect their and their political party's re-election chances. Similarly, if every Member had a private interest in the conduct and interests of every other Member from the same political party, it would be practically impossible for Members to carry out their duties and functions without breaching the Act. Such a conclusion would hamstring the operation of the Government and the Legislative Assembly and would be against the spirit and intent of the Act.

Fifth, requiring the Ethics Commissioner to weigh in on partisan political matters could politicize the role, which is required to be independent, impartial, non-partisan and confined to the limited matters addressed in the *Conflicts of Interest Act*. The popular reputation and support of a political party and Members' activities in pursuit of their general political interest in being re-elected are matters for the electorate to evaluate at the polls.

It is for all of these reasons that conflicts of interest, integrity or ethics commissioners across Canada generally have concluded that a Member's "private interest" does not include partisan political interests.

For example, former Alberta Ethics Commissioner, Robert Clark, distinguished between political interests and private interests in his April 21, 1997 report regarding Premier Klein. The allegations concerned the use of a document prepared by the Department of Treasury during an election campaign. Commissioner Clark stated (at p.7-8):

I believe that all of these possible benefits come down to one issue: Is the seeking of public office by election a "private interest" under the Act? The financial gains accrue because an individual gets paid as an MLA and as a Minister. The advantage of having Treasury Department figures would be that they would be more credible than other figures and therefore cause more people to believe them and vote for the Premier or his party or vote against the other parties. With respect to the last argument about Party funds [i.e. that by using Department resources the Party was able to free up its own funds for use in other aspects of the election campaign], it would appear to me that the benefit in that case, if there is one, is to the Party and not to any one Member. At the same time, presumably the freed up party funds would be used for other purposes related to getting the Premier and his party elected. It all boils down to whether seeking to be elected as an MLA is furthering a "private interest."

[...]

Section 1(1)(g)(i)(A) says that a "private interest" does not include an interest in a matter that concerns the remuneration or benefits of a Member. As a result, a Member can vote on MLA salaries and benefits without being in breach of the Act. By the same token, I believe an MLA can seek to be re-elected as an MLA and obtain that salary and those benefits without being in breach of the Act.

[...] If political interests, especially the interest in winning an election, is a "private interest," practically everything a Member does could be a breach of the Act because almost every activity undertaken by an elected official contains an

element of seeking popular support and the possibility of receiving that support in a re-election bid. Every speech made, every vote cast, every decision taken must, and should, contain a consideration of how that action will be received by the voters. This fundamental and final accountability to the voter is the basis of democracy. If the consideration by a Member of how much support a speech, vote, or decision will gain him or her is a "private interest" (i.e., "Will this help me get re-elected?"), the Act will operate to prevent speeches, votes, and decisions. I do not believe that the Legislature intended the *Conflicts of Interest Act* and the Ethics Commissioner to prevent Members from doing those things which they believe will maximize their public acceptance and hence their chances of being re-elected.

I am therefore of the opinion that "private interests," as that term is used in the *Conflicts of Interest Act* does not include a desire for election to political office.

A March 31, 1997, editorial in the *Edmonton Journal* pointed out that there are certain decisions that are best left to the electorate. While the editorial dealt with perception of conflict of interest, it concluded that certain aspects of political behaviour have to be judged by the citizenry at the polls. How Members pursue their political interest in being re-elected is one of these, as far as the *Conflicts of Interest Act* is concerned.

Commissioner Clark also had stated previously that the concept of "private interest" in the Act does not include political interests in his August 26, 1993 report regarding Minister Kowalski. The allegations in that investigation pertained to the Minister's distribution of specific budget information to Members belonging to the Minister's political party and not to Members associated with other political parties. Commissioner Clark concluded that this did not further a Member's "private interest", stating (at p.4):

[...] this type of allegation is complex. Many activities undertaken by Ministers -- and indeed by all Members -- may be considered by other people to have political implications. Politics and activities of politicians (in government or by private Members) are inextricably connected. [...]

Where the Office of the Ethics Commissioner receives an allegation of this type, now or in the future, it is my view that in order to constitute a conflict of interest under the Conflicts of Interest Act, the allegation must contain more than an allegation of the furtherance of political interests -- a clear private interest relating specifically and directly to the Member, the Member's minor children, or the Member's direct associates must be demonstrable. A political interest alone, if it exists, is not sufficient for a finding of a breach of the Conflicts of Interest Act.

[...] Aside from matters falling under election legislation, decisions on political promises or activities should ultimately rest with the electorate.

In her *Discontinuance Report* dated January 13, 2010, the former federal Conflict of Interest and Ethics Commissioner, Mary Dawson, stated the following regarding the alleged interests at issue in that report, being the improved electoral prospects

of the Conservative Party of Canada: “it is questionable whether those political interests are included within the meaning of “private interest” under the [federal Conflict of Interest] Act, but it is not necessary to decide that issue at this time” (at p. 6).

Commissioner Dawson later had the opportunity to consider whether “private interest” includes political interests or political advantage in *The Cheques Report* dated April 29, 2010. In that investigation, it was alleged that Conservative Party of Canada Members of Parliament furthered their private interests by enhancing their profiles and improving their electoral prospects through the use of ceremonial cheques and other props that had Conservative Party of Canada partisan identifiers on them at Government spending announcements.

Commissioner Dawson concluded that the interests at issue, namely the enhancement of the Members’ and the Conservative Party of Canada’s profiles and the improvement of their electoral prospects, are partisan political interests that are not captured by the concept of “private interest” in the *Conflict of Interest Code for Members of the House of Commons*. This is because she found that “private interest” refers to interests that are particular and personal to an individual Member outside of his or her role as an elected official. Therefore, it does not cover political gain or advantage. She also commented on the unintended impact that would result from such an expansive interpretation of “private interest” (at p.16):

One could make the argument that a Member would have a private pecuniary interest in re-election because securing a seat in the House of Commons comes with a comfortable salary and benefits. Following this argument to its logical conclusion, however, would imply that any actions undertaken by a Member aimed at enhancing his or her image with constituents could be construed as furthering a private interest, and therefore contravene the Code. This cannot be the intent of the Code.

In his May 10, 2011, Opinion regarding Premier Christy Clark, the late Conflict of Interest Commissioner for British Columbia, Paul Fraser, Q.C., took the same approach to the concept of “private interest” when he considered whether Premier Clark breached conflict of interest rules by appearing in and using government announcements during her by-election campaign for a seat in the Legislative Assembly. Commissioner Fraser found that the issues raised did not involve a “private interest”. After emphasizing the statutory exemption from the concept of “private interest” for an interest that concerns the remuneration and benefits of a Member of the Legislative Assembly, Commissioner Fraser stated (at p.2):

In addressing your request, I have to consider the threshold question of whether seeking to be elected as an MLA amounts to a person improperly furthering a “private interest”. Nowhere in the *Act* is there a suggestion that the expression “private interest” would cover or extend to partisan political gain or advantage. I suppose an argument could be mounted that because Members receive a salary and other benefits, seeking election amounts to furthering a private interest. However, following the argument to its logical conclusion would imply that any or all of the actions of a Member to seek

popular support for re-election would also be a furtherance of a private interest and a contravention of the Act. In my opinion, such a conclusion is against both the spirit, intent and, indeed, the letter of the Act.

Commissioner Fraser also drew a distinction between a “private interest” and a “political interest” in his May 4, 2016, Opinion regarding The Honourable Christy Clark. Commissioner Fraser considered whether Premier Clark’s participation in partisan fundraising events amounted to the advancement of her private interest or the acceptance of a prohibited gift or personal benefit. In his opinion, Commissioner Fraser noted that the British Columbia conflict of interest legislation “is confined to conflict of interest on a personal level” (at p.3) and its purpose is “to ensure that Members do not benefit personally from the exercise of their public duties” (at para 2). He concluded that the donations to her political party were a political benefit to the Premier because they helped boost her party’s financial wellbeing. However, they did not further her private interest or give her a personal benefit because the donations did not benefit her in a direct, particular and personal way. His comments included:

[46] While it is likely that some portion of the funds raised at the events in question may be used to promote the election prospects of the Premier and others representing the Liberal Party, this is a general, political interest. Such a wide political benefit is not to be regarded as synonymous with a personal benefit. It is too remote and speculative to be considered a “private interest” for the purposes of the Act. For a private interest to exist there must be a direct and personal benefit accruing to the Member, rather than an indirect and political one.

[...]

[69] [...] Improving the Party’s financial standing overall no doubt assists the Premier, as Leader of her Party, in the furtherance of her political aspirations and the goals of the Party. However, any such benefit the Premier might derive from the donations is of an indirect, general and political nature, rather than of a direct, particular and personal nature.

In his December 8, 2016 report *Re: The Honourable Bob Chiarelli, the Honourable Michael Coteau and The Honourable Yasir Naqvi*, the Honourable J. David Wake, Integrity Commissioner for Ontario, considered allegations that three Ministers furthered their private interests, including by benefitting from contributions to their political party as future candidates, when their ministerial staff participated in partisan fundraising activities. After referring to opinions of other commissioners, Commissioner Wake stated that contributions to a political party may create a “political interest” but do not create a “private interest” for a Member. Although some of the funds raised for their political party conceivably could benefit the individual Ministers’ future election prospects, he found that any benefit to them as future candidates would be too remote and speculative to be a private interest.

Commissioner Wake took a similar position in his August 9, 2016 report *Re: The Honourable Bob Chiarelli and the Honourable Charles Sousa*. One of the allegations in that report was that the Ministers received a fee, gift or personal benefit connected with their attendance at a fundraising event for their political party. Referring to the opinions of other commissioners in Canada, Commissioner Wake found that, while the Ministers received a “political benefit” because attendees of the event donated money to their political party, they did not receive any personal benefit from their attendance at the event.

In his May 23, 2019, report *Re: the Honourable Lisa Macleod*, Commissioner Wake likewise found that the private interest alleged in that case, being favourable media coverage for the Minister’s policy change to an autism program, was a political interest rather than a private interest “as that term has been consistently defined by Integrity Commissioners [...] across Canada” (at para. 14).

Acting as the *ad hoc* Ethics Commissioner for Québec, Jacques Saint-Laurent similarly considered in his November 8, 2017 report whether a private interest (“un intérêt personnel”) under the Code of Ethics and Conduct for Members of the National Assembly could include Members’ political or partisan interests. One of the allegations was that the Ministers at issue had furthered their private interests, which related to the interests of their political party, by hiring as their advisors former candidates from their political party who were defeated in the general election and by giving those former candidates opportunities to promote themselves locally. Commissioner Saint-Laurent considered and agreed with the opinions of other Canadian commissioners on the subject. He concluded that, absent explicit reference in the Code, political or partisan interests of Members (such as maintaining their public image or improving their electoral prospects) are not, in themselves, private interests under the Code.

For the same reasons as those of my predecessor and colleagues described above, I also have concluded on a number of occasions that a “private interest” does not include a political interest. This conclusion is consistent with my December 12, 2014, report regarding Premier Prentice, Minister Mandel and Member Ellis, my January 16, 2015, report regarding Minister Dirks, my March 4, 2016, report regarding Premier Notley, and my May 24, 2019, report regarding Premier Kenney.

In support of her submission that the interests of a Member’s political party and those of the Member’s fellow caucus members are a private interest of the Member, Member Notley’s request for an investigation pointed to the comments of the federal Conflict of Interest and Ethics Commissioner, Mario Dion, in *The Trudeau II Report* dated August 14, 2019. Commissioner Dion stated that, in his view, the concept of ‘private interest’ in the federal *Conflict of Interest Act* “may include all types of interests that are unique to the public office holder or shared with a narrow class of individuals” (at para 290). This, in his view, could include partisan political interests, being interests “designed to protect or advance the

retention of constitutional power by the incumbent government and its political supporters" (at para 291).

Commissioner Dion's view diverges from the commonly accepted reasoning that a "private interest" of a Member pertains to interests of a direct, particular and personal nature and, therefore, does not include partisan political interests. I do not find Commissioner Dion's view on "private interest" and "political interests" to be persuasive. His comments do not address or outweigh the established reasons, canvassed above, for why a "private interest" does not include partisan political interests. I also note that Commissioner Dion did not actually base his finding of a breach in *The Trudeau II Report* on this view. Rather, he found that Prime Minister Trudeau used his position to seek to influence a decision so as to improperly further SNC-Lavalin's "significant financial interests in deferring prosecution" (at para 293).

To support her submission, Member Notley's letter also referred to comments of the former Acting Conflict of Interest Commissioner for British Columbia, the Honourable Lynn Smith, Q.C., in her August 14, 2019, opinion regarding Member Ravi Kahlon. Acting Commissioner Smith stated that a "private interest" of a Member may, in some circumstances, include an indirect interest in a matter arising from the Member's close proximate relationship with, or personal loyalty and affection towards, another person who has a direct interest in the matter.

The provisions of the British Columbia *Members' Conflict of Interest Act* at issue in Acting Commissioner Smith's opinion significantly differ from the provisions of the Alberta Act that are at issue in this investigation. Unlike the British Columbia legislation, sections 2 and 3 of the Alberta Act expressly state the types of persons, beside the Member himself or herself, whose private interests are relevant to those provisions. They do not include the Member's political party or other Members in that party. Where the Act already expressly addresses the particular persons with a connection to the Member whose private interests are relevant, it is inconsistent with legislative intent to extend a Member's "private interest" in that context to include the interests of additional persons with whom the Member has a connection. Furthermore, the facts at issue in Acting Commissioner Smith's opinion bear no relation to the facts at issue here. Her comments regarding "private interest" therefore are not applicable or instructive in the context of sections 2 or 3 of the Act.

In summary, I do not find that a private interest arises because of a political connection. Only those Members being investigated by the Office of the Election Commissioner at the time of the passage of Bill 22, and who had knowledge that they were being investigated, had a private interest that required them to recuse themselves.

iii. Transfer of duties to the Chief Electoral Officer

All the powers of the Election Commissioner were transferred to the Chief Electoral Officer. It was left to the Chief Electoral Officer to decide if he wanted to hire the

former Election Commissioner. It is suggested that this transfer has the potential of impacting investigations. These are serious, unfounded allegations against the Chief Electoral Officer who is an independent Officer of the Legislature and has sworn to carry out his statutory duties.

iv. Link between Kenney campaign and Callaway campaign

Member Notley's request for an investigation states that a staff member of Premier Kenney's campaign team and now a staff member in the Premier's office, Matt Wolf, whom she identifies as a close associate, coordinated with the Jeff Callaway campaign and that this suggests a private interest of the Premier into the outcome of any investigations by the Election Commissioner into the Callaway campaign. While it appears that Matt Wolf may have been involved in some questionable political shenanigans, there is no evidence that either Premier Kenney or his Chief Financial Officer knew about them. Matt Wolf was not under investigation by the Election Commissioner at the time of passage of Bill 22, and to my knowledge, there is no current investigation.

Conclusions and Recommendations

Member Singh is the only Member who breached the Act. He should have formally recused himself pursuant to s.2(2) of the Act. However, it is significant that he did not vote and that the outcome of the vote did not halt the investigation into his campaign expenses. Nevertheless, complying with the Act is very important and the requirements for recusal should be known to all Members.

I make no recommendation with respect to penalty, other than to recommend that Member Singh apologize to the Assembly.



Hon. Marguerite Trussler, Q.C.
Ethics Commissioner

Rachel Notley
5th Floor
9820 - 107 Street
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Canada T5K 1E7

December 11, 2019

Marguerite Trussler
Office of the Ethics Commissioner
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Edmonton, Alberta, Canada T5K 2J8

Dear Commissioner Trussler:

As I addressed in my November 20, 2019 letter, on November 18, 2019 the United Conservative Party Government introduced legislation that would and has terminated the employment of the Election Commissioner, an independent legislative officer, in the midst of investigations against members of the United Conservative Party (“UCP”). This legislation was passed in an extremely perfunctory manner, with limited debate and a lack of opportunity to explore potential conflicts amongst UCP Members. Despite the cautions contained in your November 21, 2019 letter, no Member declared a private interest and withdrew from debate or voting that we are aware of.

Given the circumstances we believe this matter requires a thorough investigation pursuant to your authority under section 25 of the *Conflicts of Interest Act* (the “Act”). We provide the following submissions and, on the basis of these submissions and in accordance with section 24 request investigations against MLA Peter Singh, leadership contestants Premier Jason Kenney and Minister Doug Schweitzer, Ministers Aheer, Luan, Pon, MLAs Schow and Walker, and Members of the UCP caucus at large.

1. Facts

Bill 22 and the Election Commissioner

On November 18, 2019 Minister Travis Toews moved first reading of Bill 22, the *Reform of Agencies, Boards and Commissions and Government Enterprises Act, 2019* (“Bill 22” or the “Bill”). One of the many amendments contained within the 87-page Bill 22 was the dissolution of the independent legislative Office of the Election Commissioner (the “Office”) and the termination of Election Commissioner Lorne Gibson.¹ Specifically with respect to termination Bill 22 states:

13(5) Any employment contract between the Legislative Assembly of Alberta and the person who, immediately before the coming into force of this section, held the office of Election Commissioner under this Act is terminated on the coming into force of this section.

Under the Bill 22 amendments the Office is subsumed within the Chief Electoral Officer (the “CEO”) and the CEO holds discretion whether or not to continue any ongoing Election Commissioner investigations.

The Election Commissioner was created with the passage of Bill 32, *An Act to Strengthen and Protect Democracy in Alberta* (“Bill 32”).² The focus of Bill 32 was “to further the principles of open government in Alberta by increasing accountability, ethics, and transparency”.³

The Election Commissioner was tasked by the government with “fully investigating complaints, taking enforcement action, and recommending prosecutions” to ensure rules are followed and complaints are thoroughly investigated.⁴ This includes a power to impose letters of reprimand and significant fines, both of which have been publicly reported by the Election Commissioner and received substantial amounts of press coverage. Prior to Bill 22 the Election Commissioner had, since his appointment in July 2018, issued 31 letters of reprimand and more than 150 administrative penalties.

Election Commissioner UCP Leadership Investigations

¹ *Bill 22*, s.13(11).

² *Bill 32*,

³

⁴ *Hansard*, December 6, 2017, pg 2297. Christina Gray. *Bill 32*.

Specifically, the Election Commissioner issued more than \$200,000 in fines⁵ related to an ongoing investigation into the United Conservative Party (“UCP”) leadership race and the campaign of leadership contestant Jeff Callaway, prior to the introduction of Bill 22.⁶ Mr. Callaway has applied for judicial review of the penalties levied against him by the Election Commissioner, and the Office has applied to be an interested party,⁷ further indicating that the matter is ongoing. There is no indication that the broad investigations into Mr. Callaway or his campaign have concluded.

Multiple media reports have documented a direct relationship between the leadership campaign of UCP leader Premier Jason Kenney, and the leadership campaign of Mr. Callaway in order to characterize Premier Kenney’s most significant campaign rival as ill-tempered.⁸ This relationship was coordinated at least in part by Matt Wolf, Director of Issues Management for the Jason Kenney Leadership Campaign. Mr. Wolf now holds the title of Executive Director, Issues Management, in the Office of the Premier.

As a natural result of being the successful leadership candidate Premier Kenney became leader of the UCP and a director of the UCP pursuant to party by-laws (Appendix 1). UCP by-laws also state that Directors “shall be fiduciaries of the Association and shall exercise their duties and powers honestly and with a view to the best interests of the Association.” (Article 8.4). In addition, he is required to “promote the Party, its policies and principles” and act as the “chief public official of the Party” (Article 12.1). Party leaders carry the role of Leader only so long as they maintain support from the membership of their party.

Peter Singh Investigations

On December 5, 2018 four former UCP nomination candidates called for the UCP to disqualify now-MLA Peter Singh as a candidate for the UCP on the basis of fraud,

⁵ <https://www.theglobeandmail.com/canada/alberta/article-alberta-businessman-company-fined-25000-over-donations-to-jeff/>

⁶ <https://globalnews.ca/news/6025025/energize-alberta-fined-election-commissioner-callaway-ucp-investigation/>

⁷ <https://albertaelectioncommissioner.ca/ap-other-offences>

⁸ <https://www.cbc.ca/news/canada/edmonton/kenney-galloway-kamikaze-campaign-1.5073789>;

<https://globalnews.ca/news/5065774/kenney-callaway-campaigns-worked-together-to-undermine-brian-jeans-ucp-leadership-run-leaked-emails-show/>

bribery, and improper inducement.⁹ They also noted they intended to file complaints with the Election Commissioner.

In May 2019 media reports confirmed the Election Commissioner was investigating MLA Singh for improper inducement. Despite the ongoing investigations of his caucus member, Premier Kenney confirmed the UCP caucus would continue to allow MLA Singh to remain within the UCP¹⁰ and further, on October 2019 MLA Singh was appointed by the UCP government to sit as a member of the Standing Committee on the Alberta Heritage Savings Trust Fund.¹¹ Media reports confirmed that the Election Commissioner's investigation into MLA Singh was ongoing as of at least August 2019.

RCMP Investigations

In addition to allegations about his own nomination race, MLA Singh's counsel confirmed to media that an April 2019 RCMP-raid on MLA Singh's business was related to "alleged voter misconduct during the leadership campaign of Jason Kenney".¹² These investigations have included RCMP interviews with at least five UCP government cabinet ministers: Minister Leela Aheer, Minister Jason Luan, Minister Josephine Pon, Minister Prasad Panda, and Minister of Justice and Solicitor General Doug Schweitzer.¹³ Minister Schweitzer was also a leadership candidate during the 2017 UCP leadership race that gave rise to the investigation. UCP MLAs Joseph Schow and Jordan Walker have also been questioned by the RCMP in relation to these matters and were involved in Premier Kenney's campaign team.¹⁴ We also note that a Special Prosecutor has been appointed to ensure proper protocol is handled respecting the ongoing RCMP investigation.¹⁵

Notably the RCMP's investigation into the 2017 leadership race began when the Election Commissioner considered a number of issues outside of jurisdiction of the

⁹ <https://calgaryherald.com/news/local-news/losing-candidates-demand-ucp-overturn-fraudulent-calgary-east-nomination-vote>

¹⁰ <https://www.thestar.com/edmonton/2019/05/31/ucp-mla-peter-singh-wont-be-removed-from-caucus-pending-investigation-says-kenney.html>

¹¹ <https://edmonton.ctvnews.ca/ucp-mla-who-had-business-raided-by-rcmp-receives-promotion-1.4631897>

¹² <https://edmontonjournal.com/news/local-news/rcmp-raid-on-ucp-candidate-peter-singhs-business-connected-to-alleged-voter-fraud-says-lawyer/wcm/978fcf9c-5be1-47ea-a773-0b50f900c69e>

¹³ <https://globalnews.ca/news/5491133/ucp-leadership-race-criminal-allegations-rcmp-cabinet-interviewed/>

¹⁴ <https://www.cbc.ca/news/canada/calgary/mla-rcmp-interviews-alberta-ucp-leadership-1.5218416>

¹⁵ <https://edmontonjournal.com/news/politics/crown-confirms-special-prosecutor-in-ucp-investigation>

Office and forwarded the matter on.¹⁶ While some matters were referred on, it is clear a number remained within the Office and were under investigation at the time of Bill 22.

Passage of Bill 22

In addition to debate and voting within the Legislative Assembly, development of Bill 22 would require the Bill be considered before Cabinet Legislative Review Committee, of which Minister Schweitzer and House Leader Jason Nixon are members, and before Cabinet, of which Premier Kenney and all five above noted Ministers are members.

Even prior to the introduction of the 87-page Bill 22, the UCP government introduced and passed a closure motion, restricting the amount of time members of the legislature would have to debate the Bill. To the best of our knowledge it is unprecedented for a government to introduce a closure motion prior to introduction of legislation. As a result of the closure motion and the government's hastened agenda for Bill 22, it passed the morning of Thursday November 21, 2019 after having been introduced in the afternoon on Monday November 18, 2019 permitting members of the legislature less than four days to discuss and debate the contents of the omnibus bill.

The rapid pace of debate prevented appropriate analysis of Bill 22, including a thorough analysis on the responsibilities of Members in light of their involvement in ongoing investigations by the Election Commissioner. On November 20, 2019 I wrote to you requesting your input based on the apparent conflicts facing UCP caucus members (Appendix 2). While you were unable to initiate an investigation at that time based on a lack of voting record, in your November 21, 2019 response you noted (Appendix 3):

- Individuals currently being investigated would be in breach of the *Act* if they were to discuss portions of Bill 22 or vote on the Bill;
- Individuals with close associates under investigation would likely be in breach of the *Act* if they were to discuss Bill 22 or vote on the Bill;
- The responsibility of those being questioned by the RCMP or the Election Commissioner would depend on individual circumstances; and,
- UCP caucus members were not a straightforward situation but would be subject to consideration of s.2 and 3 of the *Act* before debating or voting Bill 22.

¹⁶ <https://www.cbc.ca/news/canada/edmonton/alberta-rcmp-investigation-ucp-financial-contributions-1.5057255>

MLA Sarah Hoffman read your response into the record prior to the legislature's final vote on Bill 22 at third reading. Again, no members declared a potential conflict and no members withdrew.

Attached as Appendix 4 to this letter is a chart outlining UCP member voting and participation records on Bill 22, compiled from Hansard records. Of note four of the five Ministers interviewed by the RCMP with respect to the UCP leadership investigation participated in either debate or voting on Bill 22 or a closure motion. With few exceptions nearly all UCP caucus members participated in Bill 22 at some stage, and no Member declared an interest or withdrew during legislative debate.

While Premier Kenney appears to have not been involved in legislative voting, he stated in the Legislature on November 18, 2019 in response to a question on Bill 22 that "the government isn't firing anybody".¹⁷ This position stands in stark contrast to the clear termination provision contained within Bill 22.

As we will describe, we believe these facts give rise to serious and significant breaches of the *Act*.

2. Prohibitions under the *Conflicts of Interest Act*

Purpose of Conflicts of Interest Act

All legislation is to be "construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects."¹⁸ Further, 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."¹⁹ Specifically, the Preamble of an enactment is a part of the enactment intended to assist in explaining the enactment.²⁰

The Preamble of the *Act* highlights the need for Members of the Legislative Assembly to promote public confidence and trust in the integrity of each Member, maintain the Assembly's dignity, and act with integrity and impartiality in reconciling their duties of

¹⁷ *Hansard*, November 18, 2019, 30th Legislature, 1st Session. Pg 2274.

¹⁸ *Interpretation Act*, RSA 2000, c. I-8, at s. 10. ["*Interpretation Act*"]

¹⁹ *Rizzo v Rizzo Shoes* [1998] 1 SCR 27, at para 21.

²⁰ *Interpretation Act*, at s.12(1).

office and their private interests. It is an inevitability that Members will have private interests; the *Act* is focused on ensuring that Members manage their duties as elected officials in a manner that maintains public confidence despite those interests.

The purpose of Alberta's *Act* was confirmed by then Member of the Legislative Assembly ("MLA") and Attorney General Ken Rostad at Second Reading of Bill 40:

...that the public and also the members want to have a code that would set out rules that we can operate under so that we as members and the public can be assured that we're keeping our duties that we have to the public through our being elected members separate from our private interests.

As a result, it can be said that the purpose of the *Act*. and the intent of the legislature in passing the *Act*. is to ensure members manage their duties as elected officials separate from private interests in a manner that maintains public confidence. Interpretation of provisions contained within the *Act* must be harmonious with this purpose.

Conflict of interest legislation must be interpreted broadly, in a manner consistent with its purpose.²¹ This approach has been adopted with respect to the execution of public office in Alberta, including by Justice Clement speaking for the Alberta Court of Appeal, who confirmed as a general principle of law that public officials must not voluntarily allow their private interest be opposed to the unbiased performance of their official duty and that:

No erosion of it, nor its application, can, in my opinion, be permitted if confidence is to be maintained in the electoral process in democratic institutions. Integrity in the discharge of public duties is and will remain of paramount importance, and when the question of private interest arises, the court will not weight its extent nor amount in determining the issue.²²

Defining "Private Interest"

²¹ See: *R v Kupfer*, 2008 MBQB 203, at para 15; *LGS Group Inc. v Canada (Attorney General)*, 1995 CarswellNat 1316, at para 50.

²² *Wanamaker v Patterson*, 1973 ALTASCAD 60 (CanLII), at para 17.

While historically consideration of private interest has excluded traditional political interests in Alberta, federal Ethics Commissioner Mario Dion recently noted the evolving definition of private interest. The evolving definition of private interest within conflict of interest legislation, coupled with the purpose of such acts, strongly suggests a broad reading of the definition that expands beyond the traditional consideration of simply pecuniary and purely personal interests.

Specifically, Commissioner Dion stated that private political interests, such as those designed to protect or advance the retention of constitutional power by the incumbent government and its political supporters, could not “be said to serve the general public and should bear close scrutiny when a public office holder is exercising his or her official duties, powers or functions”.²³ Commissioner Dion adopted a definition of private interest that can include “financial, social or political” interests.²⁴ Furthermore, as addressed by Acting British Columbia Conflict of Interest Commissioner Lynn Smith private interests are not “limited to the direct interest of the Member; they may also arise indirectly, from close proximate relationship”.²⁵

This broader definition is consistent with the purpose and objectives of Alberta’s *Act* which are focused on maintaining public confidence in the roles of elected officials. Clearly it would undermine the legitimately political nature of elected official roles to define all political interests as private interests. However, a definition of private interest that is reduced to solely financial private interests of the individual Member undermines the purpose of the *Act*. Between these two extremes it is consistent with the *Act* to find that private interest includes social or political interests where those interests are so clearly private interests as to undermine public confidence.

Even in situations where there may be an arguably justifiable public purpose for taking a certain action the fact that a private interest may be furthered by the decision means that is nonetheless a breach of the *Act*. Such a finding was made by Commissioner Dion in the recent *Trudeau II Report* of Federal Conflict of Interest and Ethics Commissioner, where he found that given that any national economic interests in that case were “inextricably linked” to the private interests of a third-party it would still be improper to attempt to influence the decision-maker by advancing the public interest.²⁶

²³ *Trudeau II* at para 291.

²⁴ *Trudeau II* at para 291.

²⁵ *In the Matter of a Request by Ravi Khalon*, August 14, 2019, Acting Commissioner Lynn Smith, at pg 14.

²⁶

In essence, a Member cannot advance a public interest no matter how righteous if that public interest would further their private interest.

These matters are distinct from any previous consideration of political interest that has been before yourself or your office in the past. There are good reasons to distinguish between an elected Member's ability to for instance, advance priorities for their local constituents or the platform of the political party on which they were elected, and a private interest. But beyond those directly or closely associated with investigations, who clearly would have a private interest there is a larger question with respect to Bill 22: are the interests of a Member's own political party, separate and distinct from the political interest of representing the very individuals that elected the Member, a private interest? We submit that answer is clearly yes.

Decision-making that Might Further a Private Interest

Section 2 of the *Act* sets out when a Member will be in breach of the *Act* when making a decision:

2(1) A Member breaches this Act if the Member takes part in a decision in the course of carrying out the Member's office or powers knowing that the decision might further a private interest of the Member, a person directly associated with the Member, or the Member's minor or adult child.

Notably this section does not require that a private interest actually *is* furthered in the end result, only that the Member knew the decision "might" further a private interest.

Where a Member is involved in decision-making that may further a private interest, they must absent themselves from not simply voting but all consideration of the matter, not only within the Legislature but at Executive Council or a committee of either:

(2) Where a matter for decision in which a Member has reasonable grounds to believe that the Member, the Member's minor or adult child or a person directly associated with the Member has a private interest is before a meeting of the Executive Council or a committee of the Executive Council or the Legislative Assembly or a committee appointed by resolution of the Legislative Assembly, the Member must, if present at the

meeting, declare that interest and must withdraw from the meeting without voting on or participating in the consideration of the matter.

Failure to do so is a breach of the *Act* under section 2(3).

A “private interest” is defined under the legislation by expressing its limits, defined under the *Act* as where the matter is of general application, affects the individual as one of a broad class of the public, concerns remuneration and benefits of the individual, is trivial, or relates to a blind trust or investment arrangement.²⁷

In a previous decision of this Office it was found that a private interest existed where a Member had a registered court-ordered support payment with Alberta’s Maintenance Enforcement program.²⁸ That Member was found in breach of section 2(2) of the *Act* when he attended the legislature during debate and acknowledged participating in votes on amendments, even where he had not been recorded doing so.

A similar finding was made where a Minister failed to recuse himself from Cabinet and committee meetings regarding an environmental decision adjacent to property he owned.²⁹ That decision also acknowledged that a breach of section 2(2) “does not require the furtherance of a private interest”;³⁰ instead it is sufficient that the private interest exist regardless of whether the interest is actually furthered.

Members have effectively utilized section 2(3) within recent memory. For instance, on consideration of *An Act to End Predatory Lending*, Member Starke declared his interest and recused himself from debate.³¹ On another occasion debate on *A Better Deal for Consumers and Businesses Act*³² proceeded in a manner that permitted Member Starke to consult with yourself in order to determine whether it was appropriate for him to participate in debate. This is the reasonable and appropriate course of action where a Member may be in a position of conflict and allows Members to avoid breach of the *Act* without impeding upon their duties.

²⁷ *Act* at s. 1(1).

²⁸ *Report of the Investigation into allegations involving Gary Masyk*, July 20, 2004.

²⁹ *Report of the Investigation into allegations involving Mike Cardinal*,

³⁰ *Ibid* at page 17.

³¹ *Hansard*, May 19, 2016, pg 1062-63.

³² *Hansard*, December 4, 2017, pg 2228.

Influence or Seek to Influence

Section 3 of the *Act* sets out a further avenue under which a Member can be in breach:

Influence

3 A Member breaches this Act if the Member uses the Member's office or powers to influence or to seek to influence a decision to be made by or on behalf of the Crown to further a private interest of the Member, a person directly associated with the Member or the Member's minor child or to improperly further another person's private interest.

This section was recently interpreted in *Report of the Investigation into Allegations Involving Ric McIver*³³ with respect to a question made in the Legislative Assembly, where your finding was that:

If it were a straightforward question it would be difficult to find an attempt to influence. However, when questions contain comment or clearly or impliedly urge the Government of Alberta to do something, they can fall within s. 3 of the Act.³⁴

Member McIver's question in that matter was found to be a breach of the *Act* on the basis that "he sought to influence the Crown's decision to implement (or prevent) certain policies, the unintended result of which, had he succeeded, would further the interest of his direct associate."

Again, it is notable that like section 2, the section does not rely on successfully furthering the private interest all that is required to establish a breach is that the Member seeks to influence a decision. Furthermore, the interpretation of this section with respect to the decision on Member McIver included a finding that intent was not required to establish a breach of section 3.

In addition to the private interests listed under section 2, section 3 also prohibits influencing or seeking to influence a decision to "improperly further another person's private interest". Identical language in the federal *Conflict of Interest Act* was interpreted by Commissioner Dion as "when a public office holder exercises an official power, duty or function that goes against the public interest, either by acting outside the scope of his

³³ January 4, 2017.

³⁴ *Ibid* at page 6.

or her statutory authority, or contrary to a rule, a convention or an established process.”³⁵

Role of the Ethics Commissioner

This matter specifically calls into question the role of the Ethics Commissioner as a legislative officer, given the UCP government’s approach to rapid passage of Bill 22. When the Ethics Commissioner was established for the first time with the passage of the *Act*, Attorney General Rostad stated:

...the Act will establish the office of an ethics commissioner. This is seen as a gatekeeper. It’s someone that the public can be assured will receive full disclosure by each elected member of all of their interests...So the commissioner would be the gatekeeper in looking at what each person has, potential conflicts or real conflicts, and dealing with those yet would be able to tell the public that he’s aware of what this person has and is assured that there is no conflict or, if there has been, that it’s been remedied and that we can sit here and operate as elected officials and the public can then regain or maintain the confidence they have in the institution of government.³⁶

As was referenced by Attorney General Rostad upon second reading of the *Act*:

The report is then tabled in the Assembly, and if the ethics commissioner makes his recommendations for a sanction, the Assembly would then be seized in handling that and increasing or completing the sanction recommended by the ethics commissioner...Again, the Assembly is the highest court in this province, and it is here that we will decide to accept or vary a recommendation of the ethics commissioner. As I mentioned earlier in the Assembly, I think it is highly, highly unlikely that any government or party would try and downplay what recommendation would come. I think the political consequences of that would be such that that wouldn't happen.³⁷

³⁵ *Trudeau II* at para 301.

³⁶ June 20, 1991, Hansard, 1868

³⁷ June 20, 1991, Hansard, 1869

The Ethics Commissioner can, upon concluding an investigation, recommend:

- (c) that the Member's right to sit and vote in the Legislative Assembly be suspended for a stated period or until the fulfilment of a condition;
- (d) that the Member be expelled from membership of the Legislative Assembly...

While the Ethics Commissioner's recommendations are not binding on the Legislature, they are, as noted by then-Attorney General Rostad, subject to serious political consequences to the extent it is unlikely a government would downplay a recommendation. As such an Ethics Commissioner can have a substantial impact on an individual Member's right to vote in the Legislature which may impact the passage of legislation.

In addition to investigating breaches "it is a function of the Ethics Commissioner to promote the understanding by Members of their obligations" by "commissioning the preparation and dissemination of written information about the obligations"³⁸ and:

44(1) The Ethics Commissioner may give advice and recommendations of general application to Members, former Ministers or former political staff members or a class of Members, former Ministers or former political staff members on matters respecting obligations of Members, former Ministers or former political staff members under this Act, which may be based on the facts set out in the advice and recommendations or on any other considerations the Ethics Commissioner considers appropriate.

It is my understanding that some of the matters referenced in my letter were referred onto the RCMP by the Elections Commission and may therefore be subject to section 25(6) of the *Act*. I would ask that, given the urgent nature of these matters, any issues that have remained within the jurisdiction of the Elections Commissioner immediately proceed to an investigation, while matters that are before a law enforcement agency be commenced and then suspended in accordance with section 25(6) until such time as those investigations have concluded.

³⁸ *Act*, Section 42(1)(b).

3. Grounds for Investigation

By terminating the Election Commissioner and granting discretion to the Chief Electoral Officer to determine whether or not to continue investigations, Bill 22 had the effect of potentially impacting those investigations. Investigations by the Election Commissioner can result in serious financial penalties for an individual or organization. While potential financial penalties clearly fall within pecuniary interests contemplated as private interests, Election Commission decisions also carry social and political repercussions given they enforce laws put in place precisely to protect the public interest and enshrine public confidence in our elected officials.

While the outcome of any investigation has a clear private interest on the basis of fiscal impacts, and as such close associates of those investigated will have a private interest, it is open to consider the broader social and political impact of adverse findings on a political party, its leaders, and elected members. Even where the individual being investigated is not necessarily a close associate, an individual may nonetheless have a private interest in the outcome of an investigation on the basis of their own social and political connections to the investigation, if the connections are closely held.

If any Member had a private interest in the outcome of those investigations, their participation in decision-making at a Cabinet meeting or Legislature sitting, or a committee meeting of either, would be sufficient to establish a breach of the *Act*. Again, neither section 2(1), 2(2), or section 3, require that a private interest actually be furthered; it is not necessary to show that investigations were terminated or impacted. It is sufficient to establish that they could have been. Given as a matter of course Bill 22 would have proceeded through Cabinet and Cabinet Legislative Review Committee, it is within your authority to review files of withdrawal to determine whether any Cabinet members with a private interest withdrew as appropriate.

As such, we submit there are grounds for investigations against a number of individuals, which we have classified into five categories below. While we believe each of the situations below provides reason to believe a contravention of the *Act* has occurred, there is an important distinction with respect to section 25 of the *Act* and the instigation for an investigation. Section 25 of the *Act* does not require you have reason to believe a contravention has occurred when you have received a request pursuant to section 24 of the *Act*. That requirement only exists where you commence an investigation without

such a request. Where you have received a request pursuant to section 24 you may commence an investigation at your own discretion, subject to the restrictions found at section 24(10).

Pursuant to section 24 of the *Act*, we request an investigation into the following individuals:

1) Individuals Directly Investigated

Where a Member is directly the subject of investigation by the Election Commissioner there is both a clear pecuniary private interest, and a social and political private interest.

If that individual was involved in a decision with respect to the process of Election Commissioner investigations at the Cabinet or Legislature level, even in committees, that individual would be in breach of section 2(1) or 2(2) of the *Act*. Similarly, if that individual made statements in the Legislature, at a Cabinet meeting, at caucus, or in some other forum in a manner that may influence government decision-making with respect to investigations, that individual would be in breach of section 3 of the *Act*.

Evidence from the Office of the Election Commissioner confirms that MLA Singh has been under ongoing investigation by the Election Commissioner. Furthermore, as noted by MLA Singh's counsel, MLA Singh's private business was also raided by RCMP officers investigating voter fraud during the leadership race of Premier Kenney, which appears to have been instigated by disclosure from the Election Commissioner.

While there is no record of MLA Singh participating in debate or voting, we note that clearly as an individual under investigation he had a duty to declare his private interest and withdraw from any Legislature meeting where the matter was being discussed or debated. We are aware of no instance where MLA Singh declared his private interest, and as such there is clear reason to believe he is in breach of section 2(2).

2) Leadership Contestants

It is evident based on the facts outlined that investigations by both the RCMP and the Election Commissioner were instigated with respect to the UCP leadership race and appear to have been ongoing at the time of introduction of Bill 22.

Furthermore, a senior staff member of Premier Kenney's campaign team, now employed in a senior leadership role in the Premier's Office, coordinated directly with the campaign of Jeff Callaway. This suggests a further private interest of Premier Kenney into the outcome of investigations given the ongoing and substantial investigations into Mr. Callaway's campaign and a close associate of Premier Kenney's being involved with that campaign.

As both Premier Kenney and Minister Schweitzer are members of Cabinet and Bill 22 would have appeared in front of Cabinet prior to its introduction in the Legislature, a further question regarding their private interest in this case must be posed as to whether there were any ongoing investigations by the Election Commissioner at the time Bill 22 appeared in front of Cabinet, and whether Premier Kenney or Minister Schweitzer properly declared their private interest at that time and withdrew.

With respect to each individual's participation in decision making we also note:

Premier Jason Kenney

Premier Kenney informed the Legislative Assembly that nobody was being fired as a result of Bill 22, which was inaccurate on its face. As a result, this statement can easily be understood to influence decisions being made by Members on Bill 22 in breach of section 3. In addition, Premier Kenney made a number of public comments defending passage of Bill 22 which could have or did have the effect of garnering support and maintaining the confidence of UCP caucus necessary for passage of the Bill. We note it is highly unlikely Premier Kenney made no comments to caucus or Cabinet during internal considerations regarding Bill 22. In the event he did, such comments would likely also offend section 3.

As such Premier Kenney appears to have breached section 3 of the *Act* and, depending on his participation in Cabinet meetings, may have also breached sections 2(1) and 2(2) of the *Act*.

Minister Doug Schweitzer

Minister Schweitzer voted in favour of closure with respect to Bill 22. Closure had the effect of limiting debate on Bill 22 in an extreme manner to the extent where the role of the Ethics Commissioner in providing investigation results that can include recommendations regarding a

Member's ability to vote were impacted. By voting in a manner that expedited consideration of Bill 22, Minister Schweitzer influenced consideration of the matter and participated in a decision with respect of Bill 22. Furthermore, Minister Schweitzer chairs Cabinet Legislative Review Committee which would have considered Bill 22 in advance of its arrival at Cabinet and in the Legislature.

As such Minister Schweitzer appears to have breached sections 2(1) and 2(2) of the *Act*. Dependent on his participation in Cabinet and Cabinet Legislative Review Committee he may have committed further breaches of sections 2(1) and 2(2) and, if he made any representations at Cabinet may have violated section 3 of the *Act*.

3) Premier Kenney as Leader

As Leader of the UCP Premier Kenney is a director of the Party which, according to the UCP bylaws, requires he act as a fiduciary to the UCP. As Leader he is also required promote the Party, its policies, and principles, and act as its chief public officer. These roles require Premier Kenney to act with the best interests of the UCP in mind and pursue objectives that further the longevity, popularity, and success of the UCP. Any damage to the reputation of the UCP, including through investigations into the leadership campaign or UCP MLAs as a whole, have the potential for undermining public perception and support of the UCP brand, membership, volunteerism, and financial contributions.

This interest in the success of the UCP is direct, personal, and emanates directly from the authority vested in Premier Kenney as Leader of the UCP. Clearly it qualifies as a private interest.

4) Individuals Closely Associated with those Being Investigated

Beyond the leadership candidates other UCP MLAs appear to have close association to those being investigated.

It has been widely reported that MLA Singh has been under investigation by both the RCMP and the Election Commissioner with respect to activities in his own nomination and the UCP leadership race. Despite that, MLA Singh remains a member of the UCP

caucus, presumably attending caucus meetings and contributing to caucus discussions, policy positions, and social functions with his caucus colleagues. Within the context of partisan politics, a loss of public confidence in one member of the party can carry significant impacts on the success of the party as a whole, including with respect to fundraising, volunteerism, and ultimate public support necessary to establish re-election.

Furthermore, UCP caucus members must be approved as candidates by the Party and local constituency associations, and Party endorsement is crucial to securing an election victory. As such all UCP caucus members have an interest in the outcome of any investigation into MLA Singh.

Even more fundamentally MLA Singh was recently appointed by the UCP government to the Standing Committee on the Alberta Heritage Savings Trust Fund, which provides MLA Singh a decision-making role and additional compensation beyond those of other caucus colleagues. Arriving at this decision suggests a close, proximate relationship between those who recommended his name for appointment and MLA Singh. While it is not within public knowledge who made that recommendation, the motion for appointment was sponsored by UCP Government House Leader Jason Nixon.

As referenced we have attached the voting and speaking record of UCP MLAs with respect to Bill 22. House Leader Nixon participated in votes at every stage of debate on Bill 22, including closure, and sits on Cabinet Legislative Review Committee. House Leader Nixon also stated to the Legislature that Bill 22 did not result in the firing of any individual, a clear attempt to influence decisions regarding Bill 22.

We submit that all Members that belong to the UCP that participated in any stage of voting on Bill 22 likely violated sections 2(1) and 2(2) of the *Act* on this basis given their knowledge of the investigation and relationship with MLA Singh within caucus. Any UCP caucus Member that spoke in favour would have violated section 3 of the *Act*. More particularly House Leader Jason Nixon's promotion of MLA Singh to a Legislative Committee suggests an even closer proximate relationship with MLA Singh than other caucus members.

5) Ministers and MLAs Questioned During Investigations

Finally, we draw your attention to the RCMP questioning of Ministers Schweitzer, Aheer, Luan, Panda, Pon, and MLAs Schow and Walker. While the extent to which these individuals are being directly investigated is not public knowledge, the RCMP investigation was instigated following referral from the Election Commissioner and is focused on the UCP leadership race. Minister Schweitzer, as previously noted, was a contestant in that leadership race, and the other members interviewed all appear to have supported Premier Kenney. This includes MLA Schow and MLA Walker, who both campaigned for Premier Kenney. Given they have been interviewed with respect to the leadership race, it is reasonable to assume they are closely associated to those being investigated.

All of the above listed Ministers and MLAs, save Minister Panda, participated in debate, voting or closure motions of Bill 22. With respect to Ministers their involvement in Bill 22 at the Cabinet stage is not public information.

As such we submit that Ministers Schweitzer, Aheer, Luan, Pon, and MLAs Schow and Walker all appear to have violated sections 2(1) and sections 2(2). Minister Aheer and MLA Schow also spoke to sections of Bill 22 specific to the Election Commissioner in the Legislative Assembly, which we submit is also in breach of section 3.

Further Areas for Investigation

While the above investigations and behaviour clearly justify a number of investigations into these matters we would ask you investigate other matters where the specific information necessary to ground an investigation is only within the possession of those individuals themselves.

Specifically, while Premier Kenney and Minister Panda did not participate in any stage of debate in the legislature, it is unknown whether they or any other Cabinet member withdrew from consideration of Bill 22 at the Cabinet stage. It is clearly within your authority to review whether any UCP Ministers declared a private interest and withdrew from consideration at the Cabinet stage.

In addition, given the number of investigations we are currently aware of and the seriousness of this matter with respect to public confidence in our elected governance system, we also request an investigation pursuant to section 24 of Members of the Legislature at large as to whether they are involved in the above referenced

investigations or any other Election Commissioner investigations that were ongoing at the time Bill 22 was considered.

Furthermore, we note that if MLA Singh or any MLA currently under investigation made other statements to Members in favour of Bill 22, including at a caucus meeting, this could qualify as a breach of section 3 of the *Act*. As such we suggest it would be open to inquire as to whether Bill 22 was considered by UCP caucus and, if so, what representations were made by individuals associated with ongoing investigations at that stage. There is no expectation of privilege from Ethics Commissioner investigations that can be asserted at the caucus stage.

4. Remedy

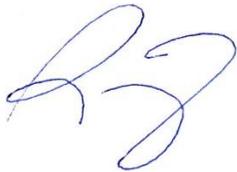
While we appreciate that this is simply a request for investigation and ultimately you must conduct that investigation and determine a breach as occurred, in these unique circumstances we find it appropriate to provide some initial input on remedy, and would be happy to provide further submissions at your request.

Given the seriousness of this situation, the use of closure as a means of limiting debate and the appropriate amount of time for consideration and advice from your office, and the very real risk of a chilling effect on Officers of the Legislature given this type of behaviour we submit that where you find a breach of the *Act* committed by a Member with respect to Bill 22 you consider the very upper end of recommendations with respect to remedy. It must be made patently clear to Members that where they attempt to interfere with ongoing investigations of a legislative office to further their own private interest the public interest will be vigorously protected. In order for public confidence to be maintained – the key objective of the *Conflicts of Interest Act* – substantial breaches must be met with correspondingly substantial penalties.

5. Conclusion

We ask that you exercise your authority pursuant to section 25 of the *Conflicts of Interest Act* to investigate the above listed individuals. This matter strikes at the heart of ensuring public confidence in our elected officials. A thorough, conclusive investigation into these matters is crucial to preserving the goals of transparency, ethics, and accountability that fall both within the jurisdiction of your office and the Office of the former Election Officer. Moreover, it is a vital step to preserving the authority of legislated officers. We remain available to provide any further input at your request.

Sincerely,

A handwritten signature in blue ink, appearing to read 'RN', is positioned above the typed name of the sender.

Rachel Notley
Leader
Her Majesty's Loyal Official Opposition

Encl.