



## **Office of the Ethics Commissioner**

### ***Conflicts of Interest Act: The Process of an Investigation***

**2020**

#### **The goal of this document**

Members of the Legislative Assembly (“MLAs”) are the elected representatives of the public in Alberta.

MLAs must follow ethical rules set out in a law called the *Conflicts of Interest Act*. The rules in the *Act* help make sure that MLAs act in the public interest and not in their own private interest. Political interests are considered public interests and not private interests.

The Commissioner cannot investigate if an MLA failed to follow any other laws, or general moral or ethical standards. While the Commissioner in Alberta is called the Ethics Commissioner, in other jurisdictions the name Integrity or Conflict of Interest Commissioner is used. Notwithstanding the name of the position, the Commissioner is limited by law to investigating breaches of the *Conflicts of Interest Act* and does not have jurisdiction to investigate any other ethical breaches not covered by the *Act*.

A member of the public, an MLA, the Legislative Assembly and Cabinet may request an investigation.

This document explains for the people involved in an investigation and for the public what an investigation is and what can be expected during one.

This document explains the process of an investigation including the decision to undertake one, the conduct of one and the release of an investigation report.

#### **The rules MLAs must follow**

MLAs must act in the public interest. They should not act in their own private interests. The *Act* says that MLAs must not, for example:

- Use their roles as MLAs in making or influencing decisions to benefit their own, their direct associates or improperly benefit others’ private interests. [A direct associate is a spouse or adult interdependent partner, a corporation where a Member is a senior officer or a director, a private corporation where a Member owns or is beneficial owner of the shares, a partnership where a Member is a partner or someone acting with the express or implied consent of the Member.]
- Use information not available to the general public they received as MLAs to benefit their own, or others’, private interests
- Accept fees, gifts or personal benefits connected to their role as MLAs

## The purpose of an investigation is to gather facts, make findings and submit recommendations

The Commissioner interviews people, requests documents and otherwise gathers evidence.

The Commissioner's goal is to determine whether an MLA failed to follow the rules in the *Act*.

At the end of the investigation, the Commissioner files a report with the Speaker of the Legislative Assembly of Alberta. The report explains the Commissioner's findings and opinion about whether the MLA breached the *Act*. If the MLA breached the *Act*, the Commissioner makes recommendations to the Assembly about whether a penalty should be imposed on the MLA and, if so, what the penalty should be.

The Assembly can accept, reject or make its own finding with respect to a breach. It can also either accept the recommendation of a penalty, decide to impose a different penalty or impose no penalty.

Anyone involved in the investigation (witnesses, MLAs) can have a lawyer represent them during the inquiry. Lawyers can attend interviews with their clients.

The MLA who is the subject of the inquiry has the right to know the allegations against him or her, who made the allegations and to respond. The subject MLA is offered the opportunity to make submissions before the Commissioner writes the report. The subject MLA can also make submissions as needed during his or her interview or at other times upon request to the Commissioner.

## An investigation is not a public hearing

At the end of an inquiry, the Commissioner's report is public. It is available to everyone on the Commissioner's website after it is provided to the Legislative Assembly. Every report that the Commissioner has written since 2003 is available on the Commissioner's website.

But, until it is completed and provided to the Legislative Assembly, the Commissioner's inquiry is conducted in private. It is not a public process like a trial. This makes the inquiry as efficient and effective as possible.

- The Commissioner and the Commissioner's staff keep information confidential except as needed to do the investigation.
- The Commissioner will not comment publicly about an inquiry.
- All the people involved (MLAs, witnesses, lawyers) should keep the process confidential.
- The Commissioner cannot confirm or deny to the public that an investigation is taking place

## The process

### Requests for an investigation

The Commissioner can only do an inquiry under the *Act* if a member of the public, a Member, the Legislative Assembly or Cabinet requests one. The Commissioner cannot commence an investigation without a request.

The person asking for the inquiry must:

- Have “reasonable and probable grounds” (this means a reason with some evidence – if possible direct – not speculation or a guess) for their belief that the subject MLA did not follow the rules in the *Act*;
- Make the request in writing and identify themselves;
- Set out sufficient particulars of the matter.

The Commissioner will not do an investigation if the matter is already being investigated by a law enforcement agency, the request is frivolous, vexatious or not made in good faith, there are no or insufficient grounds to warrant an investigation, the matter has already been investigated or the subject matter of the request is not something the Commissioner has the power to investigate.

The Commissioner may seek further particulars from the person or body requesting the investigation before deciding to conduct one. The Commissioner decides whether to do an investigation.

The Commissioner then gives the subject MLA notice and provides the request for an investigation to the MLA.

### Interviews

The Commissioner interviews witnesses as needed to determine what happened. Usually, the subject MLA will be interviewed last, after interviews with the other witnesses are complete.

Interviews usually take place in person but they may be done by telephone or video-conference if needed. If necessary, The Commissioner can compel witnesses to attend an interview and produce documents.

Witnesses can expect the following at their interview:

- They will usually be asked to give evidence under oath or affirmation
- They can have their lawyer with them
- The interview will be audio recorded
- They may be interviewed by the Commissioner’s legal counsel and the Commissioner Lawyers may attend with their clients. However lawyers, including the subject MLA’s lawyer, cannot attend the Commissioner’s interviews of other witnesses. They cannot cross-examine other witnesses.

### Documents or written statements

The Commissioner may also ask witnesses to:

- Provide documents or other things that are relevant to the inquiry
- Provide written answers to questions

### Opportunity for submissions by the MLA after evidence-gathering

After the Commissioner has finished the evidence-gathering process, the Commissioner will provide the subject MLA with the opportunity to make submissions about the findings of fact and conclusions that he or she thinks that the Commissioner should reach. The MLA may also comment on any penalty recommendation.

The Commissioner will consider the MLA’s submissions in reaching conclusions.

## The report

### The Commissioner's report is provided to the Speaker

After the investigation is finished, the Commissioner sends a report to the Speaker of the Assembly. The report explains the Commissioner's opinion about whether the subject MLA breached the *Act*. The MLA receives an advance copy of the report.

The Legislative Assembly may accept or reject the Commissioner's conclusion or make its own findings.

### The Commissioner's report makes recommendations about penalty

If the Commissioner finds that the subject MLA breached the *Act*, the *Act* allows the Commissioner to make recommendations about penalty. The Commissioner can recommend:

- That no penalty be imposed,
- That the MLA be reprimanded,
- That a monetary penalty be imposed and the recommended amount,
- That the MLA's right to sit and vote in the Assembly be suspended for a period of time or until the MLA does a specific thing, or
- That the MLA's seat be expelled from membership of the Legislative Assembly.

The Commissioner does not make the decision about penalty. The Assembly makes the decision. If the Commissioner recommends that a penalty be imposed, the Assembly may agree and order that the penalty be imposed. Or it may make its own decision on penalty.