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Marguerite Trussler  
Office of the Ethics Commissioner  
Suite 1250, 9925 - 109 Street NW  
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.<sup>1</sup> 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”).<sup>2</sup> The focus of Bill 32 was “to further the principles of open government in Alberta by increasing accountability, ethics, and transparency”.<sup>3</sup>

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.<sup>4</sup> 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**

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<sup>1</sup> Bill 22, s.13(11).

<sup>2</sup> Bill 32,

<sup>3</sup>

<sup>4</sup> Hansard, December 6, 2017, pg 2297. Christina Gray. Bill 32.

Specifically, the Election Commissioner issued more than \$200,000 in fines<sup>5</sup> 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.<sup>6</sup> 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,<sup>7</sup> 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.<sup>8</sup> 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,

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

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

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

<sup>8</sup> <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.<sup>9</sup> 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 UCP<sup>10</sup> 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.<sup>11</sup> 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".<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> We also note that a Special Prosecutor has been appointed to ensure proper protocol is handled respecting the ongoing RCMP investigation.<sup>15</sup>

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

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

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

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

<sup>12</sup> <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>

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

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

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

Office and forwarded the matter on.<sup>16</sup> 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.

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<sup>16</sup> <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”.<sup>17</sup> 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.”<sup>18</sup> 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.”<sup>19</sup> Specifically, the Preamble of an enactment is a part of the enactment intended to assist in explaining the enactment.<sup>20</sup>

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

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

<sup>18</sup> *Interpretation Act*, RSA 2000, c. I-8, at s. 10. [“*Interpretation Act*”]

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

<sup>20</sup> *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.<sup>21</sup> 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.<sup>22</sup>

### Defining "Private Interest"

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

<sup>22</sup> *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”.<sup>23</sup> Commissioner Dion adopted a definition of private interest that can include “financial, social or political” interests.<sup>24</sup> 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”.<sup>25</sup>

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.<sup>26</sup>

<sup>23</sup> *Trudeau II* at para 291.

<sup>24</sup> *Trudeau II* at para 291.

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

<sup>26</sup>



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.<sup>27</sup>

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.<sup>28</sup> 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.<sup>29</sup> That decision also acknowledged that a breach of section 2(2) “does not require the furtherance of a private interest”;<sup>30</sup> 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.<sup>31</sup> On another occasion debate on *A Better Deal for Consumers and Businesses Act*<sup>32</sup> 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.

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<sup>27</sup> *Act* at s. 1(1).

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

<sup>29</sup> *Report of the Investigation into allegations involving Mike Cardinal*,

<sup>30</sup> *Ibid* at page 17.

<sup>31</sup> *Hansard*, May 19, 2016, pg 1062-63.

<sup>32</sup> *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*<sup>33</sup> 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.<sup>34</sup>

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

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<sup>33</sup> January 4, 2017.

<sup>34</sup> *Ibid* at page 6.

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

### **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.<sup>36</sup>

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.<sup>37</sup>

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<sup>35</sup> *Trudeau II* at para 301.

<sup>36</sup> June 20, 1991, Hansard, 1868

<sup>37</sup> 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"<sup>38</sup> 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.

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<sup>38</sup> *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.

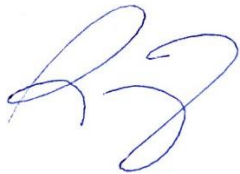
Given the seriousness of this situation, the use of closure as a means of limiting debate and the appropriate amount of time for consideration and advice from your office, and the very real risk of a chilling effect on Officers of the Legislature given this type of behaviour we submit that where you 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 printed name of Rachel Notley.

Rachel Notley  
Leader  
Her Majesty's Loyal Official Opposition

Encl.