



democracy Watch  
émocratie en surveillance

P.O. Box 821, Str. B, Ottawa K1P 5P9  
Tel: 613-241-5179 Fax: 613-241-4758  
Email: info@democracywatch.ca Internet: http://democracywatch.ca

---

Deputy Commissioner Curtis Zablocki  
Royal Canadian Mounted Police (RCMP)  
Alberta Headquarters (K Division)  
11140 109th St NW  
Edmonton AB T5G 2T4

c/o Edmonton Police Service  
Telephone: 780-423-4567  
Fax: 780-421-2187

December 4, 2019

**RE: Request for investigation into firing of Alberta's Election Commissioner**

To whom it may concern / Commissioner Zablocki:

I am writing to request an investigation into the actions of Premier Jason Kenney and his Cabinet. I am filing this request with the Edmonton Police Service (EPS) at the direction of the RCMP, as I have been told that the EPS will initiate any investigation, and then forward it to the RCMP as the matter falls under the investigative mandate of the RCMP.

**1. *Criminal Code's* "obstruction of justice" provision**

Under the *Criminal Code* (R.S.C., 1985, c. C-46), subsection 139(2):

139(2) Every person who wilfully attempts in any manner other than a manner described in subsection (1) to obstruct, pervert or defeat the course of justice is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

Subsections 139(1) and (3) suggest that the rule in subsection 139(2) applies to actions taken to obstruct, pervert or defeat the course of justice in any "judicial proceeding" that is "existing or proposed." These subsections can be viewed on this webpage:

<https://laws-lois.justice.gc.ca/eng/acts/C-46/page-32.html>.

“Judicial proceeding” is defined in the *Criminal Code*, section 118 as including a proceeding:

“before a tribunal by which a legal right or legal liability may be established, whether or not the proceeding is invalid for want of jurisdiction or for any other reason; (procédure judiciaire).”

and section 118 can be viewed at:

<https://laws-lois.justice.gc.ca/eng/acts/c-46/page-29.html#h-117787>.

The Supreme Court of Canada has ruled that to meet the standard of “wilfully” attempting to do something, there must be clear evidence of intent or knowledge of the substantial certainty of the effect of one’s actions (*R. v Keegstra*, 1990 CanLII 24 (SCC), [1990] 3 SCR 697, <<http://canlii.ca/t/1fsr1>>, in sub-part D(iii)(d)).

In *R. v. Barros*, 2011 SCC 51 (CanLII), [2011] 3 SCR 368, <<http://canlii.ca/t/fnk5t>>, at para. 46, the Supreme Court stated that:

“Section 139 describes a crime that is complete upon proof of an attempt without the necessity of success or actual completion”

and that: “The offence is framed broadly” and clarified that:

“The necessary limit is found in the obligation of the Crown to prove the mental element: *R. v. Beaudry*, [2007 SCC 5 \(CanLII\)](#), [2007] 1 S.C.R. 190, at para. 52.

## **2. Alberta’s Election Commissioner’s proceedings are “judicial proceedings”**

Under section 153.01 of Alberta’s *Election Act*, which can be viewed at:

<http://www.qp.alberta.ca/documents/Acts/E01.pdf>,

the Election Commissioner is appointed for a term of five years, removable only for cause or incapacity.

Under sections 134.2 of the *Election Act*, complaints can be filed with the Election Commissioner concerning violations of government advertising rules by government departments. Under sections 153.09 and 153.091, the Election Commissioner is empowered to investigate complaints about violations of the *Election Act*. Under sections 153.1 to 153.8, the Election Commissioner is empowered to penalize violators of the *Election Act*.

Under sections 44.95 to 44.97 of the *Election Finances and Contributions Disclosure Act (EFCDA)*, which can be viewed at:

<http://www.qp.alberta.ca/documents/Acts/E02.pdf>,

the Election Commissioner investigates various financial matters of parties, riding associations and candidates in nomination races, elections and party leadership races.

Under sections 51, 51.01, 51.02, 51.04 to 51.08, and 53 of *EFCDA*, the Election Commissioner is empowered to impose financial penalties and compliance agreements, and to initiate prosecutions, for violations of the *EFCDA*.

As a result of the above provisions, Democracy Watch's position is that the Election Commissioner is a tribunal that establishes legal rights and legal liabilities, and is therefore a tribunal covered by the section 118 definition in the *Criminal Code*. Therefore, Democracy Watch's position is that anyone who attempts to obstruct, pervert or defeat a proceeding of the Office of the Election Commissioner would be in violation of subsection 139(2) of the *Criminal Code*.

### **3. Ongoing investigation of Jason Kenney's party leadership campaign by Election Commissioner, and past rulings against the UCP**

According to this *Star Edmonton* article:

<https://www.thestar.com/edmonton/2019/08/06/election-commissioner-probing-allegations-regarding-jason-kenney-campaign-membership-irregularities.html>

in August 2019 Alberta's Election Commissioner was investigating Jason Kenney's leadership campaign for the United Conservative Party (UCP) concerning alleged violations of the *Election Finances and Contributions Disclosure Act (EFCDA)*. There has been no public indication from the Election Commissioner that this investigation has concluded.

According to this *Edmonton Journal* article:

<https://edmontonjournal.com/news/local-news/firing-of-elections-commissioner-not-a-cost-saver-elections-alberta-budget-shows>

there are currently 76 complaints to Alberta's Election Commissioner awaiting assignment.

As a result, as of the week of November 18, 2019, the Election Commissioner had several proceedings underway, including a proceeding concerning alleged violations of the *Election Finances and Contributions Disclosure Act* by people involved in Jason Kenney's UCP leadership campaign.

As of October 2019, Election Commissioner Lorne Gibson had issued more than \$163,000 in fines concerning violations of the law during the UCP leadership race, as you can see summarized in this article:

<https://www.cbc.ca/news/canada/calgary/rachel-notley-leadership-race-ucp-oversight-1.5309667>

and this article:

<https://globalnews.ca/news/5807865/ucp-leadership-campaign-jeff-callaway-court-documents/>

and the Election Commissioner issued another \$25,000 in fines in early November 2019 concerning violations of the law during the UCP leadership race, as can be seen in this article:

<https://www.cbc.ca/news/canada/calgary/robyn-lore-fines-election-commissioner-alberta-kamikaze-1.5347100>.

#### **4. Bill 22 terminates Election Commissioner, transfers power to prosecute to Chief Electoral Officer**

Bill 22 was introduced by the Government of Alberta in the Legislative Assembly on Monday, November 18, 2019. As a result, Bill 22 must have been developed, drafted and approved by Premier Kenney's Cabinet in the weeks preceding November 18, 2019.

The Government invoked closure on debate at second reading and third reading and enacted Bill 22 three days later on Thursday, November 21, 2019.

Bill 22, a PDF of which can be viewed at:

[https://www.assembly.ab.ca/ISYS/LADDAR\\_files/docs/bills/bill/legislature\\_30/session\\_1/20190521\\_bill-022.pdf](https://www.assembly.ab.ca/ISYS/LADDAR_files/docs/bills/bill/legislature_30/session_1/20190521_bill-022.pdf)

includes section 13 and subsections 14(2)(a), (5), (17) and (18). Subsection 13(11) adds a new provision 153.093 to the Alberta *Election Act*, which can be viewed at,

<http://www.qp.alberta.ca/documents/Acts/E01.pdf>

that dissolves the Office of the Election Commissioner and folds it into the Office of the Chief Electoral Officer, and under subsection 153.093(5) to terminate the employment contract between the Government and the Election Commissioner Lorne Gibson with the possibility, under subsection 153.093(6), that the Chief Electoral Officer could appoint Mr. Gibson as Election Commissioner. Under subsection 153.093(8), every person employed by the Office of the Election Commissioner becomes an employee of the Office of the Chief Electoral Officer.

Under subsection 13(13) of Bill 22, the sole power of the Election Commissioner to approve the initiation of a prosecution under the subsection 163.1(1) of the *Election Act* is transferred to the Chief Electoral Officer. Under subsection 14(18) of Bill 22, the sole power of the Election Commissioner to approve the initiation of a prosecution under section 53 of the *Election Finances and Contributions Disclosure Act* is also transferred to the Chief Electoral Officer. The *Election Finances and Contributions Disclosure Act* can be viewed at:

<http://www.qp.alberta.ca/documents/Acts/E02.pdf>.

Various statements have been issued by members of the Kenney Cabinet that the firing of the Election Commissioner was done only to save. For example, see the statement by Finance Minister Travis Toews in this article:

<https://edmonton.ctvnews.ca/election-commissioner-will-be-fired-amid-investigation-into-united-conservative-party-1.4691192>

However, after the firing, Chief Electoral Officer Glen Resler confirmed that not only would he hire a new Election Commissioner, but also that he was requesting more money in his budget for the next fiscal year for investigations than the Election Commissioner had requested. See that information in the following Edmonton Journal article:

<https://edmontonjournal.com/news/local-news/firing-of-elections-commissioner-not-a-cost-saver-elections-alberta-budget-shows>.

At the time of his firing, Election Commissioner Lorne Gibson was in the second year of his five-year fixed term. As noted above in section 2 of this letter, the Cabinet is only allowed to remove the Commissioner during his term for cause or incapacity.

## 5. Ethics Commissioner rules discussion or voting on Bill 22 a violation

Ethics Commissioner Marguerite Trussler issued a ruling on November 21, 2019 with regard to Bill 22. You can see that ruling at the bottom of this article:

<https://www.cbc.ca/news/canada/edmonton/lorne-gibson-bill-22-elections-commissioner-passes-1.5368109>.

The ruling stated:

“Those individuals who are in the process of being investigated by the Election Commissioner or the RCMP would be in breach of s. 2 (1) of the *Conflicts of Interest Act* if they were to discuss the portions of Bill 22 pertaining to the Office of the Elections Commissioner or vote on the bill.

“For those individuals who have close associates (as opposed to direct associates), eg. people who work closely with, or who work for them, in the process of being investigated, it is likely that they would be improperly furthering another person’s private interests under section 3 of the *Conflicts of Interest Act* if they were to discuss any aspects of Bill 22 or vote on the bill.”

The letter went on to say that those being questioned by the RCMP or Election Commissioner, and even UCP Members of the Legislative Assembly, could be in violation of the *Conflicts of Interest Act* depending on the circumstances.

Subsection 2(1) of the *Conflicts of Interest Act* reads as follows:

**“Decisions furthering private interests**

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.”

Section 3 of that *Act* reads as follows:

**“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.”

Given many members of the Kenney Cabinet likely participated in discussions concerning Bill 22, and votes on the Bill, and given the Election Commissioner’s investigation into the Kenney leadership campaign, and other situations involving UCP

members who may have ties to various Kenney Cabinet ministers, it is likely that at least some of them will be found guilty by the Ethics Commissioner in the future.

This ruling by the Ethics Commissioner should inform the RCMP's and prosecutors' evaluation of this situation. If, by participating in a discussion and vote on Bill 22, the Ethics Commissioner has concluded that a Kenney Cabinet minister would be doing something improper to advance their own or others' interests with regard to the investigations and rulings of the Election Commissioner, something that violates the provincial government ethics law, is that not a clear indication that it should be concluded that their actions were intended to obstruct those investigations and rulings?

## **6. Request for investigation concerning obstruction of justice by Kenney Cabinet**

From the above evidence and law, Democracy Watch's conclusion is that an investigation is warranted into the actions of the Kenney Cabinet in firing Election Commissioner Lorne Gibson.

Election Commissioner Gibson had 76 judicial proceedings underway, at least one judicial proceeding ongoing involving allegations of violations of the *Election Finances and Contributions Disclosure Act (EFCDA)* by the campaign of Jason Kenney for the leadership of the UCP.

At the time the Kenney Cabinet fired him through Bill 22, Election Commissioner Gibson had issued more than \$188,000 in fines for violations of the law during the UCP leadership campaign.

The Kenney Cabinet's claims that the Election Commissioner position was being eliminated by Bill 22 to save money seem to be false, as Chief Electoral Officer Resler confirmed after the firing that no money would be saved, and in fact costs would increase as a new Election Commissioner would be appointed and investigation funding increased.

It should be noted that Chief Electoral Officer Resler's statements go against his interests, as the Kenney Cabinet has the power to decide whether his term is renewed next April.

The firing of Election Commissioner Gibson through Bill 22 in the second year of his five-year fixed term clearly obstructs the proceedings of the Election Commissioner, as a new Election Commissioner will have to be appointed and its offices merged together administratively with Elections Alberta's offices, all of which will cause delays and possibly other negative effects on proceedings.

Given the Kenney Cabinet has the power to decide (under subsection 3(3) of the *Election Act*) whether Chief Electoral Officer Resler keeps his job beyond April 2020, the firing of Election Commissioner Gibson by the Kenney Cabinet also sends a clear message to Mr. Resler that issuing rulings against members of the UCP is something that can get you fired by the Kenney Cabinet. The effect of that message should not be underestimated –

it clearly could lead to proceedings and investigations involving members of the UCP being obstructed, perverted or defeated by Mr. Resler in an effort to have his term as Chief Electoral Officer renewed by the Kenney Cabinet.

The Ethics Commissioner has already concluded that if a Kenney Cabinet minister with an associate or associates currently under investigation by either the RCMP or the Election Commissioner took part in a discussion or vote on Bill 22, then they violated the provincial *Conflicts of Interest Act*.

Based on the above points, the firing of Election Commissioner Gibson seems to be a clear, intentional attempt to obstruct, pervert or defeat the Election Commissioner's judicial proceedings, constituting a violation of subsection 139(2) of the *Criminal Code*.

As mentioned above in section 1 of this letter, the Supreme Court has ruled that:

“Section 139 describes a crime that is complete upon proof of an attempt without the necessity of success or actual completion...”

As a result, it is irrelevant whether the firing of the Election Commissioner Gibson has obstructed, perverted or defeated any of his investigations.

For all of the above reasons, Democracy Watch requests that you undertake an investigation of the actions of the members of the Kenney Cabinet.

## **7. Public prosecutor not chosen by Kenney Cabinet or deputy ministers needed**

Given that the investigation requested in this letter involves the Kenney Cabinet, it is obvious that the Attorney General of Alberta and his deputy minister, who serves at his pleasure, cannot be involved in overseeing the investigation.

As a result, Democracy Watch requests that you make it clear to the Attorney General of Alberta and his deputy minister that you expect a special prosecutor to be appointed to oversee the investigation into this matter. Despite Attorney General Doug Schweitzer being empowered in law to appoint a special prosecutor, neither he nor his deputy minister should be involved in the appointment given the obvious conflict of interest they would have in making such an appointment.

Please let us know if you need any more information to act on this request.

Sincerely,



Duff Conacher, Co-founder of Democracy Watch  
on behalf of the Board of Directors of Democracy Watch