



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

**Report of Findings and Recommendations**

**by**

**Hon. Marguerite Trussler, K.C.,  
Ethics Commissioner**

**into allegations involving**

**Hon. Danielle Smith  
Member for Brooks- Medicine Hat  
Premier of Alberta**

**May 17, 2023**

## TABLE OF CONTENTS

<b>INTRODUCTION.....</b>	<b>2</b>
<b>SCOPE AND AUTHORITY UNDER THE ACT .....</b>	<b>4</b>
<b>LEGISLATIVE PROVISIONS RELEVANT TO THIS COMPLAINT .....</b>	<b>6</b>
<b>ALLEGATIONS .....</b>	<b>6</b>
<b>INVESTIGATIVE PROCESS .....</b>	<b>6</b>
<b>FINDINGS OF FACTS .....</b>	<b>7</b>
<b>ISSUES AND DISCUSSION OF THE LAW.....</b>	<b>13</b>
<b>FINDINGS.....</b>	<b>13</b>
<b>CONCLUSION AND RECOMMENDATIONS .....</b>	<b>16</b>

## Introduction

On March 31, 2023, I received a request from a member of the public to investigate the actions of the Premier of Alberta, Danielle Smith, with respect to her placing inappropriate pressure on the legal system relating to charges arising out of the Coutts' blockade.

The request reads as follows:

I would like to know if there are any ongoing investigations related to the conduct of our Premier, Danielle Smith, regarding the apparent pressure that she may be putting on Cabinet members or employees of the government related to the Coutts border blockade or any other issue like this.

I am not a member of any party and am a Senior Citizen who has lived in Alberta for more than five decades. All of this time I have felt that our Alberta Justice system is one that can be trusted now and in the future. If an elected official, especially a Premier, attempts to undermine current laws this needs to be reviewed. It has been very disturbing to me and others to have reports televised and published that appear to show that our Justice system is being pressured.

If no investigations are currently being done, I request your office begin one to assure all Albertans that our politicians will comply with government guidelines related to their behaviour. It is demoralizing to many young people who may want to pursue a career in politics, which had been considered at one time to be an honourable career in service of the public.

Later that same day, I received a request from Member Irfan Sabir to investigate a potential violation of section 3 of the *Conflicts of Interest Act* by the Premier. Member Sabir's letter reads as follows:

I am writing to bring your attention to a potential violation of section 3 of the *Conflicts of Interest Act* by the Member for Brooks-Medicine Hat and the Premier of Alberta, Danielle Smith.

Section 3 of the 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.

RSA 2000 cC-23 s3;2007 c28 s5

The basis of my complaint is a video conversation between Premier Danielle Smith and Artur Pawlowski, which is attached herewith for your review and consideration.

In this 11-minute conversation, Premier Smith is talking to an individual named Artur Pawlowski about his criminal charges relating to last year's Coutts blockade prior to his trial, which took place in Calgary on February 2nd and 3rd of this year.

At the beginning of this conversation, Artur Pawlowski told Premier Smith this, which provides the context for this conversation: "*As you are aware, I am still on house arrest, facing ten, ten and a half years of imprisonment for my speech in Coutts. And of course, that's very concerning to me because I came to a conclusion that I don't think I have an option except to start swinging your way because of the promises that were never fulfilled.*"

During this conversation, Premier Smith made multiple troubling statements. Among other things, you will be able to hear Premier Smith say this:

*"Once the process is underway, I can ask our prosecutors, is there a reasonable likelihood of conviction and is it in the public interest. And I assure you I have asked them that almost weekly."*

As the conversation progressed, Premier Smith further states the following:

*"Let me check on that because I don't think it would be from the Minister. I think the issue is that once the ball is rolling, these Crown prosecutors seem to be very independent and we can only ask the two questions, as I mentioned of. So I doubt very much that this is being driven by the Minister, but I have also raised it with the Deputy Minister and let him know my dissatisfaction with the tactics. So can you just leave this with me? And I will make that request one more time."*

*Brought my principal policy adviser, Rob Anderson, who's been doing most of my work with Justice and pushing this along. He's not back from vacation until Monday. So we'll see if we can revisit that this week. We did just have a case and as he told me about it, that there was a case where they did something along the same lines, huge document dump, and then they just abandoned the case. They didn't prosecute it the next day. So I'm watching to see evidence that they're going to come to this judgment that many of these cases are unwinnable and not in the public interest. And I'm beginning to see some signs that the case I haven't seen anything in your case yet."*

*But if I can just maybe make that inquiry one more time, but I'll need until next week to be able to do that."*

Artur Pawlowski responded to Premier Smith by saying *"Okay. I'll be looking forward to what you have. What you are able to find out."*

Then, further along, Premier Smith can also be heard making the following statements during this call:

*"We have a lot more limitations because I'm not a lawyer by training and that's I can tell you it's been very frustrating for me over these last few months because you're not the only one. There are many others doctors as well that I'm fighting this internal battle on, too."*

*"But maybe it's a little bit it'll be a bit more clear if I run that through with Rob. So just, just give me a few more days to circle back on this and maybe Dr. Modry can connect us again next week."*

*"Fantastic. Let me let me circle back on that. As I said, Rob, I think is back on Monday and we just had a very busy fall session. So let me see what I can do, because I. I had hoped that some of these would have been vacated by now. And I'm sorry to hear what they're putting you through."*

*So Dr. Modry knows how to. How to reach me. So we'll do this. We'll do this again when I've had a little bit more chance to talk it through with Rob."*

This entire conversation is deeply problematic on many fronts, including its implications for rule of law, judicial independence and our democracy, and for the purposes of this complaint, I believe it constitutes a breach of section 3 of the Act.

In my view, this conversation is evidence of Premier Smith using the power and influence of her office to influence or seek to influence a decision to be made by or on behalf of the Crown to improperly further Artur Pawlowski's private interest contrary to section 3 of the Act.

I urge you to fully investigate this matter of utmost public importance at your earliest.

After the first request, I ascertained there were grounds for an investigation. In addition to the first request and the NDP request, there were 54 other requests or support for an investigation.

### **Scope and Authority Under the Act**

Before dealing with the specifics of this complaint, it is instructive to review the *Conflicts of Interest Act* and the role and powers of the Ethics Commissioner. The *Act* sets out the obligations of Ministers, Members, political staff, senior officials and designated senior officials, as well as the parameters of the jurisdiction of the Ethics Commissioner. The Ethics Commissioner has no power beyond that given in the provisions of the *Act*. Notwithstanding some broad philosophical provisions in the preamble to the *Act*, the scope of the *Act* is narrow. The *Act* does not deal with moral integrity.

The authority for conducting an investigation is in Part 5 of the *Act*. The relevant sections are:

**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.

...

**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.

...

(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.

...

The office received many calls and emails, mostly from the media, to determine if we were carrying out an investigation. However, we were not able to answer the questions due to the provisions of s. 26 of the *Act*:

**26(1)** Except as provided in this section, the Ethics Commissioner, any former Ethics Commissioner and a person who is or was employed or engaged by the Office of the Ethics Commissioner shall maintain the confidentiality of all information and allegations that come to their knowledge in the course of the administration of this Act.

(2) Allegations and information to which subsection (1) applies may be

(a) disclosed to the individual against whom the allegation was made;

(b) disclosed by a person conducting an investigation to the extent necessary to enable that person to obtain information from another person;

(c) disclosed in a notice or report made by the Ethics Commissioner under this Act;

...

### **Legislative Provisions Relevant to this Complaint**

The provision of the *Act* that applies is s. 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.

Private interest is defined in the negative in s.1(1)(g) of the *Act*:

"private interest" does not include the following:

- (i) an interest in a matter
  - (A) that is of general application,
  - (B) that affects an individual as one of a broad class of the public, or
  - (C) that concerns the remuneration and benefits of an individual;
- (ii) an interest that is trivial;
- (iii) an interest of an individual relating to publicly-traded securities held in that individual's blind trust or in an investment arrangement

### **Allegations**

The allegations are that Premier Smith sought to influence the prosecution of Artur Pawlowski who was facing charges relating to the Coutts border crossing blockade and, thereby, improperly tried to interfere with the administration of justice. There are further allegations that a member of the Premier's political staff tried to influence the Coutts and Covid-related cases by sending a critique of the cases directly to a Crown Prosecutor.

### **Investigative Process**

I notified Premier Smith of the first request for an investigation and that I had determined that I would investigate the allegations on March 31, 2023. I also contacted the person who made the first request who provided further details to add to his request. I received the second request later on March 31, 2023, and advised Premier Smith of the second request on April 3, 2023.

An investigation plan was prepared and an initial list of people to be interviewed was made. I advised the majority of those to be interviewed on April 3, 2023, that I wished to interview them. Several names were added to the list subsequently.

I requested documents on Monday, April 3, 2023, from those on the initial list of interviewees and gave a deadline for their receipt. These timelines were extremely short given all the recipients have many other duties to perform. I expected and received a request for a reasonable extension of time, which I granted.

All participants fully co-operated. In particular, Premier Smith waived solicitor/client privilege for the purposes of this investigation with respect to a number of documents.

I interviewed the following people who were either sworn or affirmed:

1. Hon. Justice Frank Bosscha who was Deputy Minister of Justice and Attorney General during the relevant time period
2. Ray Gilmour, Deputy Minister of Executive Council
3. Kim Goddard, K.C., Assistant Deputy Minister of Justice, Alberta Crown Prosecution Service
4. Marshall Smith, Chief of Staff to the Premier
5. Dr. Jeremy Hexham, Executive Assistant to the Premier
6. Christopher Thresher, Chief of Staff to the Minister of Justice
7. Steven Johnston, Crown Prosecutor
8. Dr. Dennis Modry
9. Rob Anderson, Executive Director, Office of the Premier
10. Hon. Tyler Shandro, K.C., Minister of Justice and Attorney General
11. Hon. Danielle Smith, Premier of Alberta
12. Elise von Scheel, CBC reporter

I also received statements from all 44 Crown Prosecutors who worked on Covid and Courts-related cases and from all 32 political staff members in the Premier's office.

My report was finished on May 2, 2023, and, as required by s. 27(4) of the *Act*, on May 4, 2023, it was forwarded to legal counsel for Premier Smith, Mr. Munaf Mohamed, K.C., so that representation could be made, if desired. Mr. Mohamed sent written representations on May 8, 2023, and requested a video conference call which was scheduled for May 9, 2023. At that time the Premier was also present. Mr. Mohamed made oral representations and Premier Smith clarified a few matters and was asked further questions.

### **Findings of Facts**

Danielle Smith is the Premier of Alberta and Member for the Brooks-Medicine Hat constituency. She has been the leader of the United Conservative Party since October 6, 2022.

In January of 2023, the CBC aired a story relying on an unnamed source that a political staff member in the Premier's office had directly contacted prosecutors in the Criminal Prosecution Service about Covid-related prosecutions.



In March of 2023, a tape was posted to the CBC website of a conversation between Premier Smith and Mr. Pawlowski.

Highlights from the tape are set out in the NDP request for an investigation. I also downloaded the tape and personally listened to it.

The allegation is that the Premier and her staff, as a result of these two incidents, interfered with the administration of justice and thereby breached s.3 of the *Conflicts of Interest Act*.

#### *Events prior to Danielle Smith becoming Premier*

Premier Smith indicated that she first heard about the Trudeau Report II which was a report of the Federal Conflict of Interest and Ethics Commissioner, Mario Dion, into interference by Prime Minister Justin Trudeau in respect of the SNC-Lavalin case, when she was a radio talk show host. It was a matter of discussion on her show.

During her leadership campaign, she received questions in rural Alberta about amnesty for Covid-related *Public Health Act* charges. She campaigned on providing amnesty to those charged with non-violent cases that were not contempt of court or firearms-related cases.

Prior to her election as leader of the United Conservative Party, Tyler Shandro, Minister of Justice and Attorney General, received an inquiry from her campaign team about his stance on the Covid-related cases. He was asked his opinion on amnesty, clemency and pardon. He replied that clemency was a process limited to the Parole Board and that pardon and amnesty described political interference in the prosecution of cases to which he was opposed.

Premier Smith stated that she had no knowledge of the call.

#### *Initial briefings to the Premier*

Minister Shandro was not at the initial departmental briefings of the Premier which are usually attended by the Deputy Minister to Executive Council, Ray Gilmour, and the Deputy Minister of the relevant department of Government. The Premier, during the Justice Ministry meeting, requested a briefing on the Covid and Coutts-related cases from the Deputy Minister of Justice, Frank Bosscha.

It is possible that he briefly outlined the role of the Attorney General at that time.

Throughout the fall session of the Legislature, Deputy Minister Bosscha fairly regularly briefed the Premier late on Monday afternoons on forthcoming legislation from Justice that would be presented to Cabinet the next day. There was some discussion, at times, in these meetings when the Premier would ask for an update on the status of the Ingram case and the CM case, two non-criminal Covid-related cases that were before the Courts.

#### *Briefings to Minister Shandro*

Minister Shandro was reappointed Minister of Justice and sworn in on October 24, 2022. He received a briefing dated October 25, 2022, from his Department relating to Public Health prosecutions. It set out the limits on political interference in ongoing prosecutions. Minister

Shandro stated that he made it clear to his Ministry that there be no interference with the Crown Prosecution Service.

The briefing note on the Covid-related cases covered the role of the Attorney General and it touched on the summary conviction cases and the constitutional challenge cases. Minister Shandro reviewed the briefing note shortly after he received it. It advocated no political interference with the Crown Prosecution Service with respect to these cases. Minister Shandro did not brief the Premier on the briefing note.

#### *Communications between the Premier's Office and the Minister of Justice's Office*

Rob Anderson, Executive Director to the Premier, had a number of emails with Christopher Thresher, Chief of Staff to the Minister of Justice, and Deputy Minister Bosscha. In particular, there was an October 26, 2022, email exchange about a briefing on the role of the Attorney General and what government was allowed to do with respect to prosecutions.

The document providing advice to the Premier on the subject of amnesty was finalized on October 26, 2022. However, there is no evidence that the Premier received this briefing. Coincidentally, the same day, and probably as a result of the email from Rob Anderson, Christopher Thresher emailed the Deputy Minister about a briefing on amnesty for non-criminal Covid-related charges. The note that had been prepared was sent to Mr. Thresher the same day. A meeting was held on October 27, 2022, attended by Rob Anderson and Minister Shandro to discuss the briefing note.

On November 1, 2022, the Premier's Executive Assistant, Dr. Jeremy Hexham, forwarded a memo to Minister Shandro from the Premier which read, in part;

...Following up on prior discussions between our offices, I would like you to provide me with a proposal on proceeding with some form of amnesty or clemency for individuals who have been charged with various COVID-19 related offences.

In preparing this proposal, I would like you to delineate between individuals charged with criminal code offences that include violence, are weapons related or are for contempt of court, from those involving alleged mischief, violations of provincial health orders or other minor offences.

If possible, I would like you to provide my office with this proposal by the end of next week, so we can plan implementation and communications surrounding this initiative by the end of the year.

#### *The Power Point presentation about the role of the Attorney General*

On November 13, 2022, Deputy Minister Bosscha wrote to staff about finishing up a Power Point presentation for the Premier. The Power Point presentation references two cases before the courts. One was the October 26, 2022, decision in the Court of Kings Bench in *CM v. Alberta* and the other was *Ingram v. Alberta*, a decision which had been reserved. It also outlined the role of the Attorney General indicating while the Attorney General could be involved in policy, the Attorney General should not be involved in individual cases but leave all prosecutorial decisions to the Crown Prosecution Service.

Rob Anderson went through the Power Point presentation with Premier Smith with respect to options on amnesty sometime in November. He told her she could only ask if the charges were in the public interest or if there was a reasonable likelihood of conviction. The advice was to wait for the outcome of the *Ingram* decision.

### *The Ezra Levant memo*

In October 2022, the Premier ran into Ezra Levant at a function. He said he had some ideas about how the Premier could deal with the Covid-related cases. The Premier advised him to send an email with a letter attached to her Chief of Staff, Marshall Smith, who was with her. On October 25, 2022, Marshall Smith received the email directly from Ezra Levant which surprisingly, from someone legally trained, advocated direct interference by the Premier by having her order a stay in prosecutions. The Premier also received this letter directly from Mr. Levant. Marshall Smith forwarded the email to Christopher Thresher who, in turn, forwarded it to Minister Shandro. He forwarded the email to Deputy Minister Bosscha. Minister Shandro indicated to Deputy Minister Bosscha that he did not agree with the conclusions in the email and that he wanted the Deputy Minister to make sure that the Crown Prosecutors remained independent.

Deputy Minister Bosscha forwarded the email to the Assistant Deputy Minister in charge of the Crown Prosecution Service, Kim Goddard, which she received on October 25, 2022. The Deputy Minister also asked her to call him so they could discuss what would be needed to brief Minister Shandro on why Ezra Levant's arguments were incorrect. She did not forward the email to any members of the Alberta Crown Prosecution Service. It stopped at her office. Part of her role is to protect the independence of the Crown Prosecution Service and it is apparent that she took that role very seriously. Any briefings on cases from the Crown Prosecution Service that she received were not given to the Attorney General but were for the purposes of informing her so she could give a brief summary to the Attorney General as to their progress. She takes the position that the Attorney General delegates his prosecutorial authority to the Deputy Minister and the Assistant Deputy Minister, and the Attorney General only directs policy.

### *Requests for updates on legislative options to provide amnesty*

In late November and throughout December, Rob Anderson followed up with Minister Shandro and Mr. Thresher for updates on legislative options to provide amnesty. Minister Shandro remembers these calls as questions from Mr. Anderson about the difference between various groups of cases, for example, criminal code, bylaw and Public Health Act and how they could be handled. No particular cases were discussed. No options for changing legislation to nullify the charges using legislative changes to Provincial legislation were ever forwarded from Justice.

Premier Smith seems to have left Mr. Anderson to pursue what could be done with Covid-related charges for cases where there was no violence, no firearms involved or there was no contempt of court.

Sometime in December of 2022, the Premier passed Minister Shandro in the lounge behind the Legislative Assembly during the Fall Sitting of the Legislature. She said to him something along the lines of that she hoped there was something he could do about the Covid prosecutions. No specific cases were mentioned.

### Telephone call with Artur Pawlowski

In January of 2023, Artur Pawlowski, who was facing criminal charges in relation to the Coutts blockade, contacted Dr. Dennis Modry to ask if he could arrange a meeting between himself and the Premier to talk about the charges. Dr. Modry contacted the Premier and she said she would do a telephone call with him. She had spoken to other leaders of political parties, and she knew that Mr. Pawlowski was the leader of the Independence Party. However, while Dr. Modry said he asked the Premier if she would speak to Mr. Pawlowski about his case, the text message requesting the call reads as follows and does not reference Mr. Pawlowski's criminal charges:

*Hi Danielle. Would you be willing to have a conversation with Artur Pawlowski in person or by telephone in the next 48 hours? I believe that he can help you against Notley. Den*

Premier Smith felt blindsided when Mr. Pawlowski wanted to talk about his pending criminal trial.

The Premier agreed to have a call the next day, which was January 6, 2023, after 3:00 p.m. It was a three-way call and Dr. Modry was present for the call. Unbeknownst to the Premier and Dr. Modry, Mr. Pawlowski taped the call. It was the tape of the call which was released by CBC and the New Democrats in March of 2023. An interesting sidenote is that Dr. Modry believes that the tape was edited as he remembered Mr. Pawlowski being much more aggressive and threatening than on the tape released to the public. During the call the Premier mentioned that she had frequent contact with Crown Prosecutors. She stated to me, under oath, that she had never personally spoken to any Crown Prosecutor about a Covid or Coutts-related case but had used the words to refer to the Justice Ministry. The only people that she spoke to were Minister Shandro and Deputy Minister Bosscha. It appears that whenever Premier Smith referred to the Crown Prosecutors, she meant the Justice Ministry, Minister Shandro and Deputy Minister Bosscha.

### Premier Smith's call to Minister Shandro

Premier Smith called Minister Shandro on January 6, 2023, in the evening.

The Premier initially remembered having a telephone call with Minister Shandro but not the date of the call, except that she thought that it was after Mr. Pawlowski's press conference which took place later in January. However, during the second interview with me, she accepted that it was on January 6, 2023. Minister Shandro remembers the call clearly as he was in Fernie, B.C. on vacation with his family.

The Premier did not advise Minister Shandro that she had had a personal telephone call with Mr. Pawlowski. She started the conversation by stating that she did not know if it was appropriate to call him. She advised that he indicated that she could continue as the Deputy Minister shielded him from the Covid-related cases. While she says that she started to talk about the cases generally, at some point she turned to Mr. Pawlowski's case. It is important to note that this call was only a few hours after the Pawlowski call.

However, Minister Shandro has a different version of the conversation. Minister Shandro does not recall the Premier beginning the call by asking him if it was okay for her to ask him about the Covid-related prosecutions. He advised me that he never felt any such conversation would be appropriate and that he almost certainly would not have indicated it was okay to proceed. He remembered that there was a brief conversation generally about Covid-related prosecutions but Premier Smith turned very quickly to Mr. Pawlowski's case, which Minister Shandro understood was the reason for the call.

Minister Shandro recalls that during the call, but not at the beginning of the call, Premier Smith asked him about the extent to which he could get involved in a prosecution. She pointed out that he was the Attorney General and she seemed to suggest something that was influenced by Ezra Levant's letter. In response, he recalls that he tried to explain the role of the Attorney General and that while the Crown Prosecution Service is under his authority, he could not personally get involved in files or speak to prosecutors. He made the point that there is a separation between his office and that of the prosecutors.

The Premier remembers that during the conversation, Minister Shandro explained to her the difference between prosecutions under the *Critical Infrastructure Defence Act* and the *Criminal Code* as opposed to Public Health Orders which was the first time the distinction had been explained to her.

Minister Shandro stated that Premier Smith was passive/aggressive throughout the call. She asked him specifically if there was anything he could do about Mr. Pawlowski's case. She wanted him to make it go away, although she did not direct him to do so. She was concerned about a press conference that Mr. Pawlowski said he was going to have and how bad the optics would be for the Party.

Minister Shandro told her there was nothing that could be done, and she accepted his advice. There were no further conversations between Minister Shandro and the Premier on this subject.

### The CBC allegation

On January 19, 2023, a story was aired on CBC that someone in the Premier's office had contacted the Crown Prosecution Service about the Coutts cases. CBC also sent an email to the Premier's office alleging three emails had been sent in late 2022 challenging the Crown's assessment and direction on Coutts-related prosecutions. In one of the emails, the staff member had allegedly sent a video. CBC admits it has not seen the emails and has not revealed the source who provided the story.

The person who was alleged to have sent one, or perhaps more, of the emails was incensed by the allegations and denied them. The lawyer conducting or participating in all the Coutts prosecutions, Steven Johnston, said that he was never contacted by anyone in the Premier's office.

Kim Goddard, Assistant Deputy Minister of Justice, at one point held a town hall video meeting with prosecutors and reiterated the independence of the Crown Prosecutors. She told them to ignore political statements and to advise her if anyone was contacted, particularly if the contact was from a political source. At one point, she requested and received from the Crown Prosecution Service an update on all cases, but it was used by her merely as a reference to brief the Attorney General and was never forwarded.

The Public Service Commissioner, with the consent of Deputy Minister Gilmour for Government staff and Mr. Marshall Smith for political staff, conducted an email search of the emails of all political staff in the Premier's office and all Crown Prosecutors with Covid-related cases. Nothing was found. The email search was fairly reasonable given the time parameters in which it was done. A more thorough search would have taken considerably more time and would have been costly.

I think that it can be said that the members of the Crown Prosecution Services were annoyed and even incensed by the allegation that one of them had received outside political pressure. Assistant Deputy Minister, Kim Goddard, is confident no one in the Service received an email.

All 44 Crown Prosecutors who had Coutts or Covid-related files provided a statement that they did not receive any contact relating to their files from the Premier's office.

All 32 political staff members in the Premier's office, at the relevant time, provided a statement that they did not contact any Crown Prosecutors regarding the Coutts or Covid-related files.

### CBC's release of the recording

CBC released a copy of the recording of the Pawlowski conversation on March 29, 2023.

### Issues and Discussion of the Law

The issues to be decided are whether Premier Smith, or any of her political staff acting as her agents, used her office to seek to influence a decision of the Crown to improperly further another person's private interest and whether she otherwise interfered with the administration of justice.

There are three questions that need to be answered. They are:

1. Did someone from the Premier's office send an email about the Covid-related prosecutions to a Crown Prosecutor?
2. Was it improper for the Premier to discuss Mr. Pawlowski's criminal case with him?
3. Did the Premier interfere with the administration of justice in her interactions with the Minister of Justice and Attorney General in his role as Attorney General or anyone in his Ministry in relation to the Covid-related prosecutions?

The assessment of whether a Member has done something "to improperly further another person's private interest" usually depends heavily on the particular facts of each case. However, to interfere with the administration of justice is *prima facie* improper. The question is whether on the facts the Premier interfered or tried to interfere with the administration of justice.

### Findings

1. Did someone from the Premier's office send an email about the Covid-related prosecutions to a Crown Prosecutor and did the Premier speak to any Crown Prosecutor?

I want to deal first with the allegation published by CBC that a member of the Premier's staff emailed a Crown Prosecutor about a case before the courts. I asked numerous questions of a considerable number of people about the existence of any email and could find no evidence that the event occurred, or that any email exists. The CBC has not seen the emails and has not divulged, quite rightfully, its source. It was public knowledge that this investigation was taking place and one might expect that the CBC source would have come forward on an anonymous or confidential basis. All Crown Prosecutors who have Covid-related files have stated that they did not receive an email critiquing the Crown's position and all the Premier's staff have stated that

they did not send such an email. As a result, I found no evidence of such an email and I can only come to the conclusion, based on the evidence that I have, that no Crown Prosecutor was emailed directly about any of the cases. There appears to be no interference with the independence of Prosecutors on this level.

There is no evidence that the Premier ever spoke to any Crown Prosecutor. It would appear that she, unfortunately, used the term inappropriately.

The only incident that is in any way close to what was reported was the email containing a letter sent by Ezra Levant, criticizing the prosecutions, and purporting to show why they were wrong and what to do about them. This communication was sent to the Premier's Chief of Staff, Marshall Smith, who forwarded it to the Chief of Staff to the Minister of Justice, Christopher Thresher, for response. As the letter was within the jurisdiction of the Justice Ministry, the email was appropriately forwarded from one political staffer to another so that the second political staff member could deal with the letter.

Mr. Thresher provided the email letter to the Minister of Justice, Tyler Shandro who in turn forwarded it to the Deputy Minister, Frank Bosscha. It was then sent to the Assistant Deputy Minister in charge of the Crown Prosecution Service who did not forward it to any Crown Prosecutor. She appropriately had a discussion about it with the Deputy Minister and nothing further happened with the letter.

## 2. Was it improper for the Premier to discuss Mr. Pawlowski's criminal case with him?

Members of the Legislative Assembly (particularly, members of Executive Council) and Deputy Ministers and other public servants, with the exception of members of the Crown Prosecution Service, should not speak with any accused person (or his or her representative) about any ongoing criminal matter before the Courts. The legal system is an independent arm of government and neither the Legislative branch of Government nor the Executive branch of Government should interfere or appear to interfere with the Judicial branch of Government. To do so is to endanger the independence of the judicial system. This principle is a fundamental pillar of our democracy. The Premier breached this principle by discussing the accused's case with him. If a Member of the Legislative Assembly or Public Service inadvertently finds themselves in such a situation, the Member or public servant must terminate the discussion forthwith.

The Premier has claimed that she agreed to speak to Mr. Pawlowski as he was head of the Independence Party of Alberta. She had spoken to leaders of other political parties. Although she had to have been aware that Mr. Pawlowski was facing criminal charges, in fairness, the text from Dr. Modry to the Premier did not say the reason for the conversation was to discuss Mr. Pawlowski's charges. The Premier was adamant that she did not know the call was to be about Mr. Pawlowski's court case. However, when the Premier became aware that the call was about Mr. Pawlowski's upcoming trial, she should have clearly told Mr. Pawlowski that she could not speak to him about criminal charges that he was facing and immediately terminated the call.

While Premier Smith breached this principle, her telephone call with Mr. Pawlowski itself is not a matter covered by the *Conflicts of Interest Act*.

3. Did the Premier interfere with the administration of justice in her interactions with the Minister of Justice and Attorney General in his role as Attorney General or anyone in his Ministry in relation to the Covid-related prosecutions?

Did Premier Smith seek to influence a decision of the Crown to improperly further another person's private interest when she called the Attorney General on the evening of January 6, 2023?

Private interests are for the most part financial. In this case, Mr. Pawloski's private interests include both the possibility of a fine or incarceration, as well as the financial cost of his legal fees. These are clearly private interests. None of these fits any of the exceptions in s.1 (1)(g) of the *Act*.

The issue then is whether the Premier made the phone call improperly.

With respect to the content and context of the call, where there is a difference in memory about the telephone call, Minister Shandro's recollection was clearer and more precise than the Premier's. Minister Shandro had very few, if any, one on one conversations with the Premier. A telephone call in the evening while he was on holiday would have been remarkable and not easily forgotten.

The purpose of Premier Smith's call was to influence a decision of the Crown to prosecute Mr. Pawlowski, which is a private interest of that individual. She asked the Attorney General if there was something that could be done about the charges and could they help Mr. Pawlowski. She was concerned about the political optics of the press conference Mr. Pawlowski was planning.

It is improper for any elected official to try to interfere with the administration of justice by interfering in a prosecution. In *Krieger v Law Society of Alberta*, 2002 SCC 65, the Supreme Court of Canada stated: "It is a constitutional principle that Attorneys General of this country must act independently of partisan concerns when exercising their delegated sovereign authority to initiate, continue or terminate prosecutions." (para 3)

Speaking to an Attorney General about a specific ongoing criminal case, in the way that Premier Smith did on the call with Minister Shandro, is not acceptable. Just as was the case with Prime Minister Trudeau in the SNC-Lavalin case, Premier Smith was the only person who, by virtue of her position, could clearly exert influence over the Attorney General and had the power to remove Minister Shandro from his position as Minister of Justice and Attorney General. I believe that Minister Shandro must have felt considerable pressure and concern for his tenure as Minister as a result of the call.

In the whole scheme of things, it is a threat to democracy to interfere with the administration of justice. It is the first step toward the type of judicial system often found in a non-democratic or pseudo-democratic country where members of and friends of those in power are shielded from prosecution or are acquitted by the courts on the instructions of those in power. As well, those opposing the Government face trumped up charges and are convicted based on political instructions to the judiciary which slavishly follows the government agenda in order to keep their positions. This independence is a cornerstone of any democratic society and democracy will fail without it.

As Commissioner Mario Dion stated in the Trudeau Report II, it only takes one instance of seeking to influence a decision of the Crown to improperly further another person's private interest to contravene the section of the *Act*. The attempt does not have to be successful. The Minister of Justice and Attorney General, Tyler Shandro, stood his ground in defending the independence of



the Crown Prosecution Service and its right to be free from political interference. Nonetheless, there was an improper attempt to influence the independence of the legal system. I make this finding taking into consideration the briefings the Premier had had on prosecutorial independence and the fact that she was aware of the SNC-Lavalin case.

### **Conclusion and Recommendations**

In my opinion, Premier Smith contravened s.3 of the *Conflicts of Interest Act* in her interaction with the Minister of Justice and Attorney General in relation to the criminal charges Mr. Pawlowski was facing.

At this point, I make no recommendations with respect to sanctions against the Premier for consideration of the Legislative Assembly of Alberta but reserve the right to make recommendations once the Legislative Assembly is back in session.

I also recommend that:

1. All new Members of the Legislative Assembly of Alberta attend mandatory training upon election about the structure of Canadian government and the roles of the three branches of government.
2. The Legislative Assembly of Alberta consider whether to amend the *Conflicts of Interest Act* to provide for a stay on any ongoing investigation from the time that the writ drops for an election until the election results are certified. Similar provisions are found in section 30(4.1) on the Ontario Members' Integrity Act, 1994, SO 1994, c.38. Not having such a provision puts the Ethics Commissioner and the Speaker of the Legislative Assembly in an extremely difficult position with respect to the timing and release of any report.



Hon. Marguerite Trussler, K.C.  
Ethics Commissioner