OFFICE OF THE ETHICS COMMISSIONER
PROVINCE OF ALBERTA

Report to the Speaker of the Legislative Assembly of Alberta

of the Investigation

by Neil Wilkinson, Ethics Commissioner

into allegations involving

The Honourable Alison Redford, Q.C., Premier

December 4, 2013

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ALLEGATIONS

[1] On November 28, 2012, I received a letter dated the same day from Dr. Raj Sherman, Member for Edmonton-Meadowlark and Leader of the Alberta Liberal Party, requesting I investigate a possible breach of the *Conflicts of Interest Act* (the *Act*) by the Honourable Alison Redford, Q.C., Minister of Justice at the time of the alleged breach of the *Act*, and now Premier of Alberta. The alleged breach concerns the engagement of a consortium to represent Her Majesty the Queen in Right of the Province of Alberta in litigation against major tobacco companies. The suit seeks recovery of damages and health costs borne by Albertans arising from the use of tobacco products (the tobacco litigation).

[2] The consortium engaged operates as the International Tobacco Recovery Lawyers (ITRL[1]) and is comprised of an Ontario law firm, a Florida law firm and two law firms from Calgary, including the firm Jensen Shawa Solomon Duguid Hawkes LLP (JSS Barristers).

[3] In his letter, Dr. Sherman said:

> . . . .
> *Premier Alison Redford, while serving as Minister of Justice at that time, was responsible for selecting a law firm to handle the government's tobacco litigation. The value of that government contract is estimated to [sic] in excess of tens of millions of dollars.*
>
> *Ms. Redford chose to award that contract to a consortium of law firms that includes that of her ex-husband, Robert Hawkes. It has been widely publicized that Mr. Hawkes was Ms. Redford's transition team leader after she won the leadership of the Progressive Conservative Association of Alberta and became premier.*
>
> *This is an extremely troubling revelation that clearly puts Ms. Redford in a potential conflict of interest. As leader of the Alberta Liberal Opposition, I am asking you to conduct a thorough investigation into this matter to determine if Ms. Redford violated Section 2(1) of the Conflicts of Interest Act, which states:*
>
> > *"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 the private interest of the Member, a person directly associated with the Member or the member's minor or adult child."*

[4] On December 3, 2012, I received a letter from Danielle Smith, Member for Highwood and Leader of the Official Opposition Wildrose Party, dated November 30, 2012. Ms. Smith also requested I investigate whether the Honourable Alison Redford, Q.C., breached the *Act* as a result of her involvement while Minister of Justice in the selection of the consortium of law firms engaged by Her Majesty the Queen in right of the Province of Alberta to conduct the tobacco litigation.

[1] This consortium is sometimes referred to by others as the "Tobacco Recovery Lawyers" or "TRL".

[5] In her letter, Ms. Smith said:

> . . . .
> *Concerns have been raised about the process by which the Consortium, which is led by a boutique litigation firm in Calgary named JSS Barristers ("JSS"), came to be selected as legal counsel representing the Crown.*
> . . . .
> *Our concern with Premier Redford having selected the legal counsel involved her close personal and political ties with JSS. Most particularly, one of the firm's principals, Robert Hawkes, Q.C., is Premier Redford's ex-husband, her long time political advisor, one of her key fundraisers, and the leader of her transition team when she became Premier in 2011.*
> . . . .
> *There are two issues we view as particularly concerning and which we believe merit investigation by your Office, which is not limited by FOIP Act exemptions in its review.*
>
> ***Possible Violation of s.4 (Insider Information) of the Conflicts of Interest Act***
> *First, we are concerned there may have been a breach of section 4 of the Conflicts of Interest Act, R.S.A. 2000, c. C-23. In lobbyist registry disclosure (attached), a registered lobbyist named Tim Wade indicates that he began lobbying on behalf of JSS and the Consortium in relation to the Tobacco Litigation on May 1, 2009.*
>
> *A search conducted at our request by the Legislature Library was unable to find any public record of the Crown Right of Recovery Act before it was introduced May 11, 2009. Absent insider information being passed to JSS and/or Mr. Wade, it would seemingly have been impossible for JSS and/or Mr. Wade to be aware that there was Tobacco Litigation to lobby for prior to May 11, 2009. An investigation into what information Mr. Wade and/or JSS had on or before May 11, 2009 and whether or not it was obtained in violation of section 4 is, in our view, warranted.*
>
> ***Possible Violation of s. 3 (Influence) of the Conflicts of Interest Act***
> *Second, and more importantly, we are concerned that there may have been violations of section 3 of the Conflicts of Interest Act. The circumstances surrounding the granting of the Tobacco Litigation retainer to the JSS Consortium has all the traditional hallmarks of a conflict of interest:*
>
> - *There was a close and ongoing personal and political relationship between a Member who was deciding which firm would be retained for the Tobacco Litigation and the firm that was awarded the contract;*
> - *The decision seems to have been influenced by a single criteria (on-going litigation Government of Alberta) that was introduced into the decision making process after the process was underway;*
> - *There appears to have been an intentional limiting of the number of people involved in preparing for the decision;*
> - *The decision appears to have been made vary hastily and under unusual timelines; and*

- *While perceived and actual conflicts of interest, namely whether any of the candidate firms were involved in litigation adverse to the Government of Alberta, appear to have been considered for the purpose of limiting the number of candidate law firms viewed as eligible for the retainer, the seemingly obvious conflict of interest between Ms. Redford and one of the candidate firms appears to have either been overlooked or ignored.*

. . . .

We also believe that a broad reading of section 1(5)(e) of the Conflicts of Interest Act could hold that some members of JSS would qualify as persons directly associated with the former Justice Minister and creates the appearance of a violation of section 2(1) of the Conflicts of Interest Act (Decisions furthering private interests).

Breach of the Public Confidence

. . . .

I note that the preamble to the Conflicts of Interest Act requires Members to:

> *... perform their duties of office and arrange their private affairs in a manner that promotes public confidence and trust in the integrity of each Member, that maintains the Assembly's dignity, and that justifies the respect in which society hold the Assembly and its Members; and*
> *... in reconciling their duties of office and their private interests, are expected to act with integrity and impartiality . . .*

If, as has been suggested, there hasn't "technically" been a violation of section 2 or 3 of the Conflicts of Interest Act, it seems obvious a breach of the spirit of the Act, as encapsulated in the Preamble, has occurred.

[6] Following my review of the correspondence and various attachments to the correspondence, my review of the *Act* and consultation with my Chief Administrative Officer, Glen Resler, CMA and my General Counsel, Bradley Odsen, Q.C., I determined an investigation was warranted. I notified Premier Redford of this determination as required by *section 25(1)* of the *Act*.

[7] I then wrote to Dr. Sherman and Ms. Smith, by letter dated January 4, 2013, advising I had opened this investigation.

[8] It should be noted that in correspondence initially received from Dr. Sherman and Ms. Smith, and additional correspondence subsequently received from each after my letters of January 4, 2013, suggestions were made about what I ought to investigate and how I ought to conduct this investigation. I always carefully consider such submissions, but in this instance much of what was suggested is beyond my jurisdiction under the *Act* and certainly gives the appearance of endeavoring to influence my investigation.

[9] My sworn duty is to investigate actual alleged breaches of the *Act* objectively and impartially and to ignore partisan hyperbole.

[10] The questions to be answered by this investigation are:

1. **Did the Honourable Alison Redford, Q.C., while Minister of Justice for the Province of Alberta, take part in a decision in the course of carrying out her office or powers knowing that the decision might further her private interest, or that of a person directly associated with her, or that of her minor child, and thereby commit a breach of *section 2(1)* of the *Act*?**

2. **Did the Honourable Alison Redford, Q.C., while Minister of Justice for the Province of Alberta, use her office or powers to influence or to seek to influence a decision to be made by or on behalf of the Crown to further her private interest, or that of a person directly associated with her or her minor child or to improperly further another person's private interest, and thereby commit a breach of *section 3* of the *Act*?**

3. **Did the Honourable Alison Redford, Q.C., while Minister of Justice for the Province of Alberta, use or communicate information not available to the general public that was gained by her in the course of carrying out her office or powers to further or seek to further her private interest or another person's private interest, and thereby commit a breach of *section 4* of the *Act*?**

4. **Did the Honourable Alison Redford, Q.C., while Minister of Justice for the Province of Alberta, conduct herself in such a way in this particular matter that she breached the spirit of the *Act,* as stated in the Preamble to the *Act*? And if so, does such breach of the spirit of the *Act* constitute an actual breach of the *Act*?**

PROCESS/PERSONS INTERVIEWED/EVIDENCE OBTAINED

1. Process

[11] While my staff and I reviewed the requests for investigation and the law to determine whether an investigation was warranted, we also considered how, if an investigation went forward, we would conduct that investigation. While my Office had previously conducted investigations under the *Lobbyists Act*, this would be the first investigation conducted under the *Conflicts of Interest Act* since my appointment as Ethics Commissioner[2].

[12] Upon deciding to investigate, we also determined the investigation would require resources beyond those available within our Office. Accordingly, we engaged the services of Bill Shores, Q.C., of Shores Jardine LLP to work with and receive instructions from my General Counsel. I also engaged the services of the Honourable Terrence McMahon, Q.C., a retired Justice of the Court of Queen's Bench of Alberta. Mr. Justice McMahon was asked to monitor the investigation and provide his advice and recommendations.

[2] Subsequent to this investigation commencing, I initiated and concluded two investigations of Member Sandhu.

[13] I assigned the investigation lead to my General Counsel, Mr. Odsen. He was primarily engaged in communications with various witnesses, their legal counsel and our independent legal team.

[14] Being mindful of the extreme volatility of this matter and the amount of public comment it had already generated, we determined a more formal process was required than was usual for investigations conducted by my predecessors. We decided to provide each witness with a series of written questions, or Written Interrogatories, to be answered in writing as a Statutory Declaration.

[15] All were in agreement that the process should begin with Written Interrogatories to Premier Redford. Consideration of her responses would determine questions to be asked of other witnesses.

[16] The first Written Interrogatory containing 48 questions was provided to Premier Redford on February 1, 2013. Her written Statutory Declaration was provided to my Office by her legal counsel on March 26, 2013.

[17] Premier Redford responded to the Written Interrogatories with her Statutory Declaration in an open, fulsome and timely manner. Written Interrogatories were then provided to all key witnesses. We identified documents as possibly material to the investigation that might be in the control of individual witnesses; we asked for a copy of such documents as an Annex to their Statutory Declaration. If the witness was unable or unwilling to produce such documents, we asked they provide an explanation. In those instances where such explanations were provided, this was considered and as is noted in paragraphs [35] – [41] below, after lengthy negotiations a process to satisfy my requirements was devised.

[18] Shortly after Written Interrogatories were provided to various witnesses, legal counsel engaged by individual witnesses began contacting Mr. Odsen. Counsel advised us of their engagement, indicated their clients' position regarding the information sought and indicated the time they expected they would need to comply with our request. A table of witnesses and their legal counsel is included in the next section.

[19] The second Written Interrogatories were sent to other witnesses between May 17, 2013 and May 24, 2013. We requested and expected all responses to our Written Interrogatories would be returned to our Office no later than June 30, 2013. With the exceptions noted below, all Statutory Declaration responses were received in my Office before July 31, 2013.

[20] On June 3, 2013, David P. Jones, Q.C., called Mr. Odsen, advised that he had been engaged as counsel for the Crown, and that some of the interrogatories put to the Crown's lawyers and to one witness, who was an employee of the Crown, whose role put him in contact with the lawyers, raised issues of solicitor-client and litigation privilege. Mr. Jones noted that the Department of Justice wished to be as forthcoming as possible without waiving the claimed privileges. He noted that he was not being instructed by the Honourable Allison Redford and had had no communications with her. His instructions were being provided by senior legal counsel in the Department of Justice and senior administration of the Crown. The instructions were

motivated by a concern over the Crown's privilege in the Tobacco Litigation and other litigation involving the Crown.

[21] This initiated a series of "without prejudice" discussions between Mr. Jones and Mr. Shores with at least two meetings attended by Mr. Shores, Mr. Odsen, Mr. Resler, Mr. Jones and the primary contact for the Crown providing instructions to Mr. Jones. The purpose of these discussions was to explore possible ways for the information to be provided without violating the claimed privileges. I will revisit these discussions and provide more detail further below in this report.

[22] I did not attend any of these meetings nor participate in any of these discussions. As they were all "without prejudice" conversations, they are not part of the evidence I am allowed to consider in my investigation.

[23] Finally in early October, 2013, my Office received the information from the Crown, without violating the claimed privileges, to satisfy me that all material evidence required had been disclosed. Following receipt of that information, one final in-person interview was conducted with Premier Redford on November 1, 2013. This interview addressed issues arising from the evidence received subsequent to the initial Written Interrogatories to which she had responded. A written Submission from her counsel was received at my Office on November 8, 2013, and has been duly considered.

2. Persons Interviewed

[24] More than 100 documents provided in the initial Access to Information Requests which led to this investigation consisted primarily of email communication among persons employed by the Crown, primarily in the Ministry of Justice. The initial task faced by my team was identifying those who could clearly provide material evidence and separating them from those who were clearly included in a support capacity, not as decision-makers.

[25] The following table sets out summarily the witnesses contacted, their legal counsel and the number of questions asked of each witness.

Witness	Legal Counsel	Number of Questions Asked
The Honourable Alison Redford, Q.C., then Minister of Justice and Attorney General	A. Webster Macdonald, Jr., Q.C. Blake Cassels & Graydon LLP	48 initially; 11 subsequently
Robert Hawkes, Q.C., Partner, JSS Barristers	Unrepresented	26
Ray Bodnarek, Q.C., then Deputy Minister of Justice and Deputy Attorney General	David Phillip Jones, Q.C. deVillars Jones LLP	72
Grant Sprague, Q.C., then Assistant Deputy Minister of Justice – Legal Services	David Phillip Jones, Q.C.	55

Martin Chamberlain, Q.C., then Assistant Deputy Minister of Health and Wellness – Corporate Services	David Phillip Jones, Q.C.	54
Lorne Merryweather, Q.C., Executive Director of Legal Services, Alberta Justice	David Phillip Jones, Q.C.	60
Jeff Henwood, then Executive Assistant to the Minister of Justice	David Phillip Jones, Q.C.	22
Tim Wade, consultant lobbyist	John W. Donahue, Q.C.	29
James Cuming, Partner, Cuming & Gillespie Barristers & Solicitors	Unrepresented	10

3. Evidence Obtained

[26] In total, 377 questions were asked in Written Interrogatories and responses received in the form of Statutory Declarations. More than 20 additional questions were asked in personal interviews. Several hundred pages of documents were provided, mostly from the original Access to Information Request, but also from several witnesses as addendums to their Statutory Declarations. I want to note especially that Mr. Wade was very thorough by providing copies of all communications and conversation notes relating to his engagement by ITRL from start to finish. I am grateful for his cooperation and comprehensive responses.

[27] Questions directed to Premier Redford concerned:

- Her understanding of the process used to identify the successful firm to represent the Crown in the tobacco litigation and her role in the decision, as Minister of Justice, to use that process;
- Her involvement in the process as it progressed;
- Her relationship with Mr. Hawkes;
- Her relationship with JSS Barristers;
- Her relationship with the other consortiums in competition for this engagement;
- Her role in the engagement of the ITRL consortium by the Crown in the tobacco litigation; and
- Her interactions with Mr. Wade throughout this period.

[28] Questions directed to Mr. Hawkes concerned:

- His relationship with Premier Redford;
- His political activities and financial contributions to his constituency and the Progressive Conservative Party;

- The potential financial benefit to him personally should the tobacco litigation eventually prove successful; and
- His role in ITRL's engagement by the Crown.

[29] Questions directed to Mr. Cuming concerned:

- Which Alberta law firms were part of the ITRL consortium;
- The circumstances under which the various firms joined the consortium and when;
- Where the information concerning the pending tobacco litigation came from, and when; and
- Particulars of the engagement of Mr.Wade to lobby on behalf of ITRL.

[30] Questions directed to Mr. Wade concerned:

- Particulars of his engagement by ITRL;
- Details of his lobbying activities on behalf of ITRL; and
- Details of his communications with the Crown and ITRL during the course of his engagement.

[31] Questions directed to the Crown witnesses concerned:

- The role of each witness in the determination of the process used to identify the firm to be engaged to represent the Crown in tobacco litigation;
- The understanding and perceptions of each witness concerning the involvement of then Minister Redford in the selection process, from start to finish;
- The on-going role of each witness as the process moved from initial determination of the process to the final Recommendation contained in Briefing Memo AR39999; and
- The role of each witness in the events subsequent to the December 14, 2010 memo from then Minister Redford to then Deputy Minister of Justice, Ray Bodnarek, Q.C., stating, "…the best choice for Alberta will be the International Tobacco Recovery Lawyers."

[32] Members of my legal team reviewed political donation information on the website of the Chief Electoral Officer.

[33] What the evidence revealed is discussed in the Findings section of this report. However, it is appropriate to revisit the matter of privileges claimed by the Crown in responding to the questions directed to them.

[34] There is a long-standing historical and legal basis for maintaining privilege and the Office of the Ethics Commissioner is not authorized to access privileged information. In order to provide me with the fullest information possible, my general counsel, independent counsel, Mr. Jones, and senior legal counsel for the Crown began without prejudice discussions as soon as practicable. Counsel for the Crown and my Office worked hard to move this issue to a resolution as quickly as possible.

[35] In particular, I wanted access to Briefing Note AR39999 and, through my general counsel, a formal request was made that privilege be waived in a letter dated September 24, 2013. Mr. Jones had to obtain instructions in relation to this request. He did so and responded in a letter dated September 27, 2013, advising that he was not able to waive privilege and setting out the grounds for that position. He confirmed that the Crown wished to do whatever it could to assist me in performing my very important role, provided that it could be done without waiving privilege.

[36] The without prejudice discussions were the preferred course as it was clear to all that, if this issue were to end up in the courts, it could well extend this investigation for years and generate enormous additional costs. It also seemed likely the courts would support the claims of privilege, so nothing would be gained and much would be lost.

[37] Following is Mr. Jones' full response to Mr. Odsen's request of September 24, 2013:

> *September 27, 2013*
>
> *Mr. Bradley V. Odsen, Q.C.*
> *General Counsel*
> *Office of the Ethics Commissioner*
> *1250, 9925 - 109 Street NW*
> *Edmonton, Alberta, T5K 2J8*
>
> *Dear Mr. Odsen:*
>
> ***Re: Investigation by the Ethics Commissioner into Alleged Breaches of the Conflicts of Interest Act by The Honourable Alison Redford. Q.C.***
>
> *This is in reply to your letter dated 24 September 2013 asking the Province to waive legal privilege with respect to Briefing Note 39999.*
>
> *For the record, I want to make it clear that I act for the Province of Alberta. I do not act for The Honourable Alison Redford, Q.C. I have not had any communication with or received any instructions from her about this matter.*
>
> *In late May 2013, you asked five persons (four of whom are lawyers employed by the Department of Justice) to answer written interrogatories which you had prepared for them about the selection of outside legal counsel to represent the Province in the Tobacco Recovery Litigation. Your interrogatories anticipated that your request for a copy of Briefing Note AR39999 might not be able to be answered due to legal privilege.*
>
> *On 3 June 2013, I contacted you to let you know that I act for the Province with respect to the legal privilege issue. In particular, I drew the following legal concerns to your attention:*

· *The Conflicts of Interest Act does not provide the specific legislative authority which the Supreme Court of Canada has held would be necessary for the Ethics Commissioner to be able to order the production of a document which is protected by legal privilege: Blood Tribe Department of Health v. Canada (Privacy Commissioner), [2008] 2 S.C.R. 574.*

· *The law does not permit privilege to be waived selectively—once privilege is waived, it is gone. The Conflicts of Interest Act does not contain a provision like section 38.1 of the Personal Information Protection Act, which provides that a selective disclosure of a record under that Act does not constitute a waiver of privilege. In the absence of such a provision in the Conflicts of Interest Act, the Province cannot privately disclose Briefing Note AR39999 to the Ethics Commissioner without losing the ability to assert privilege in other contexts.*

· *The Province is extremely concerned not to do anything which could in any way conceivably jeopardize its position in the $10 billion Tobacco Recovery Litigation.*

For the above reasons, the Province cannot waive privilege with respect to Briefing Note AR39999.

Nevertheless, the Province wishes to do whatever it can to assist the Ethics Commissioner in performing his very important role, provided that can be done without waiving privilege.

Over the last few weeks, you, Mr. Shores and I have devised the following mutually agreed mechanism to achieve this result. The Province will retain a retired Justice of the Court of Queen's Bench, the Honourable Edward P. MacCallum, who has been mutually agreed upon by the Province and the Ethics Commissioner. The Province will provide Justice MacCallum with Briefing Note AR39999, which will not be disclosed to anyone else. The Ethics Commissioner will provide Justice MacCallum with other documents which have been mutually agreed upon by the Province and the Ethics Commissioner, which are relevant to the investigation by the Ethics Commissioner. After reviewing these materials, Justice MacCallum will independently answer specific questions which have been mutually agreed upon between the Province and the Ethics Commissioner about the contents of Briefing Note AR39999. This mechanism is designed to meet the needs of both parties: Legal privilege will be maintained because Justice MacCallum is retained by the Province, and Briefing Note AR39999 will not be disclosed to anyone else. The Ethics Commissioner will receive the information he requires in order to be able to confirm that the contents of Briefing Note AR39999 is consistent with the other information which the Ethics Commissioner has obtained during his investigation.

We are now ready to proceed with this arrangement. My expectation is that Justice MacCallum will be able to perform this assignment within the next few days.

[38] The Honourable Edward P. MacCallum was retained by the Crown by the end of September, 2013. My general counsel prepared a detailed letter of instructions for him.

[39] The Honourable Edward P. MacCallum undertook his task on October 3 and 4, 2013, at the offices of Shores Jardine LLP, the office of my independent counsel. Mr. Shores and Mr. Jones were present and jointly provided him with the materials necessary to complete his task. Mr. Shores did not see Briefing Note AR39999, but was present when it was provided to the Honourable Edward P. MacCallum.

[40] The Honourable Edward P. MacCallum worked at his task independently in a room provided to him for his exclusive use. He was provided with secretarial and administrative assistance through Mr. Shores' office. When questions arose, they were addressed by Mr. Jones and Mr. Shores jointly. His final report was delivered to Mr. Jones and Mr. Shores jointly, and is attached in its entirety, less attachments, to this report as Appendix "A".

BACKGROUND

[41] The *Crown's Right of Recovery Act*, S.A.2009, c. C-35, was introduced to the Legislative Assembly as Bill 48 on May 9, 2009. It was passed by the Assembly following Third Reading on November 18, 2009, received Royal Assent on November 26, 2009 and was Proclaimed in force on May 31, 2012. Under Part 2 of that *Act*, entitled "Third-party Liability – Tobacco Products", Her Majesty the Queen in Right of the Province of Alberta is able to sue tobacco companies for the costs incurred by the citizens of Alberta, directly and indirectly, arising from tobacco use.

[42] Alberta was not the first Canadian jurisdiction to enter into this kind of litigation. The Province of British Columbia was first, commencing court action in 2001. New Brunswick followed course by filing court action in 2008; Ontario filed in 2009 and Newfoundland and Labrador in 2011. As would be expected, tobacco companies named as defendants in these actions have been most vigorous in their defense. It does not appear that any of these actions have commenced to trial.

[43] In early 2009, a partner in the Greg Montforton and Partners law firm of Windsor, Ontario contacted James Cuming of the Cuming & Gillespie law firm in Calgary about joining a consortium of law firms to be set up in each Canadian jurisdiction which did not yet have tobacco recovery legislation in place but in which it was expected there would be such legislation in the future. These jurisdictions were primarily Alberta, Saskatchewan, and Manitoba. Mr. Cuming agreed to join the Alberta consortium and contacted a partner at McLennan Ross LLP to inquire about their interest in joining the Alberta consortium.

[44] McLennan Ross joined the consortium and in turn brought in Field Law. At around the same time, at the suggestion of James Cuming, Mr. Tim Wade was engaged to lobby on behalf of the consortium. At some point later, it was determined the approach to managing litigation of this magnitude suggested by the McLennan Ross/Field group differed from that proposed by other members of the consortium. There was an amicable parting of the ways and McLennan Ross/Field subsequently presented its own proposal to Alberta Justice about taking on this litigation.

[45] After the McLennan Ross/Field group left the ITRL consortium, Mr. Cuming needed the support of a firm with greater resources than his could marshal to join the consortium. He approached a partner at JSS Barristers with whom he was familiar to gauge their interest in joining the consortium. Mr. Cuming did not know at this time that Mr. Hawkes was a member of JSS Barristers. He was "shocked" when it came to his attention through events leading up to this investigation that there was a prior relationship between Mr. Hawkes and Premier Redford. Mr. Hawkes was not involved, in any way, in any of the discussions between JSS and other members of the ITRL consortium.

[46] From the introduction of Bill 48 (The *Crown's Right of Recovery Act)* to shortly following its enactment, the Ministry of Justice conducted a process to identify outside counsel to be engaged to conduct the tobacco litigation. The ITRL consortium was engaged in this regard in 2011. At the time of engagement ITRL was comprised of the following law firms:

- Cuming & Gillespie, Calgary, AB;
- Jensen Shawa Solomon Duguid Hawkes LLP, Calgary, AB [JSS Barristers];
- Greg Montforton and Partners, Windsor, ON; and
- Levin, Papantonio, Thomas, Mitchell, Echsner & Proctor P.A., Pensacola, Florida[3].

[47] The Honourable Alison Redford, Q.C. was first elected to the Alberta Legislature March 3, 2008 and appointed Minister of Justice March 12, 2008. She served as Minister of Justice until her resignation as Minister February 16, 2011. She resigned to run for the Leadership of the Progressive Conservative Party.

[48] The essence of this investigation is whether then Minister Redford, while serving as Alberta Minister of Justice, made improper use of her office to further the private interest of her ex-husband, Mr. Hawkes, or the private interest of the law firm in which he is a partner, JSS Barristers. The indicia of "improper" are found in the sections of the *Conflicts of Interest Act*, as set out above in the four questions that this investigation answers.

[49] To understand the full context of this matter, it is necessary to first understand the sequence of events material to the issues raised, as disclosed by the evidence obtained, and summarized as follows:

A. Timelines regarding Ms. Redford and Mr. Hawkes

- Alison Redford and Robert Hawkes married in 1986, separated in 1990 and divorced in 1991. There were no children of the marriage, the matrimonial property was divided equally, and there were no financial obligations of either to the other.
- There was virtually no contact whatsoever between Ms. Redford and Mr. Hawkes following the divorce until 1997. Mr. Hawkes remarried in 1993 and has two sons from that marriage.
- From 1997 to 2004, Ms. Redford and Mr. Hawkes had minimal interactions with one another arising from social, professional and political activities.

[3] The current iteration of this firm is Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor P.A.

- In 2004, Ms. Redford sought the Calgary West Conservative nomination and Mr. Hawkes volunteered for her campaign but had no leadership role in the campaign.
- Other than during that nomination campaign, Ms. Redford and Mr. Hawkes had very little contact with one another until 2008. Any interactions occurred in social, professional, or political contexts.
- After her appointment as Minister of Justice, Ms. Redford still did not see Mr. Hawkes very often and when she did it was in the same contexts as previously noted. She occasionally telephoned him to ask how particular issues were perceived in Calgary or in the legal community.
- It wasn't until January or February 2011, when Mr. Hawkes joined a group in Calgary seeking to persuade Ms. Redford to run for Leadership of the Progressive Conservative Party, that she and Mr. Hawkes began to be in contact with one another on a somewhat more regular basis.
- On February 16, 2011, Ms. Redford resigned as Minister of Justice to begin her campaign for Leader of the Progressive Conservative Party.
- After her election as Leader, Ms. Redford chose Mr. Hawkes to lead her transition team, which he did for a period of two weeks in October, 2011. After this brief period, he returned to his law practice.

B. Timelines regarding the selection of counsel process

- On May 11, 2009, the Honourable Ron Liepert, then Minister of Health and Wellness, moved First Reading of Bill 48, the *Crown's Right of Recovery Act*, in the Legislative Assembly.
- On October 25, 2010, Minister Redford announced the Government of Alberta was commencing an action against tobacco companies under this *Act* and committed to a one-year timeline to commence the action.
- On November 1, 2010, Lorne Merryweather, Q.C., Executive Director, Coordination of Legal Services for Alberta Justice, sent emails to several law firms advising the Alberta Government would engage outside counsel to conduct the tobacco litigation. Attached to that email was an information sheet explaining the parameters and process for selection of the firm or consortium of firms to represent the Crown. The date for response indicated in that email was November 15, 2010.
- Also on November 1, 2010, Mr. Merryweather emailed a person responsible for some aspects of website content of the Alberta Justice website, requesting a note be posted on the website inviting firms interested in conducting the tobacco litigation to contact him.
- During the next two weeks, discussions were held within the Ministry of Justice to determine who should serve on the Selection Committee to review expressions of interest received from law firms and consortiums. It was finally determined the Selection Committee would consist of Mr. Merryweather, Grant Sprague, Q.C., then Assistant Deputy Minister of Justice, and Martin Chamberlain, Q.C., then Assistant Deputy Minister of Health. Minister Redford was not involved in determining the composition of the Selection Committee.

- On November 17, 2010, a Briefing Note[4] to the Minister was prepared and provided to Minister Redford. The briefing note:

    - Describes the use of an expression of interest process rather than a more formal RFP process;
    - Identifies that information was sent to ten firms, some of whom previously expressed interest in representing the province and some who were thought might have an interest;
    - Identifies that four firms submitted a proposal by the deadline, including International Tobacco Recovery Lawyers (including Jensen Shawa Solomon Duguid Hawkes LLP); and
    - Describes next steps, including a recommendation from the Review Committee followed by "Decision by Minister in early December" and "Enter into retainer agreement by mid-January".

- Also on November 17, 2010, an email was sent from Neil Dunne, Q.C., then Executive Director of Legal Services in Alberta Justice to Mr. Merryweather and other officials within the Ministry asking whether any of the firms mentioned in Mr. Merryweather's email were involved in significant matters against the Crown, and that a list of such firms be included in the briefing provided to the Minister.
- Over the next 12 days, the Selection Committee was involved in a flurry of activity around the selection process, including meeting with and receiving presentations from firms and consortiums remaining in the competition. A common set of questions was asked of all those presenting to the Selection Committee. Presentations were assigned a rank based on an objective grading matrix developed by the Selection Committee.
- Sometime between November 30, 2010 and December 8, 2010, Briefing Note AR39999 was prepared for the Minister; sometime between December 8, 2010 and December 14, 2010 it was presented to and reviewed by the Minister.
- On December 14, 2010, Minister Redford, issued a Memorandum to then Deputy Minister, Mr. Bodnarek, which said:

    Subject: Tobacco Litigation
    Thank you for preparing briefing note AR 39999 regarding Tobacco Litigation. I note that the Review Committee considers all three firms interviewed to be capable of adequately conducting the litigation and believes that while no consortium stood above the others, all three have unique strengths and weaknesses.

    Considering the perceived conflicts of interest, actual conflicts of interest, the structure of the contingency arrangement and the importance of a "made in Alberta" litigation plan, the best choice for Alberta will be the International Tobacco Recovery Lawyers.

- On December 22, 2010, Mr. Sprague advised Carsten Jensen, Q.C., of JSS by telephone that the ITRL consortium, of which JSS was a member, was the successful candidate for

[4] This is Briefing Note AR39999.

engagement to conduct the tobacco litigation. He also advised the process of negotiating the engagement agreement would commence in January, 2011.

- On December 23, 2010, the unsuccessful firms and consortiums were notified of that fact by email with letter attached.
- At some point in January 2011, a decision within the Ministry of Justice was made that outside counsel would be engaged to negotiate the engagement agreement with ITRL. The firm was engaged and negotiations began.
- On June 21, 2011, the Honourable Verlyn Olson, Q.C., then Minister of Justice, signed the engagement agreement on behalf of the Crown.

[50] Tim Wade, a consultant lobbyist, was engaged by ITRL on May 1, 2009 to lobby the Crown on its behalf about the anticipated legislation. Those lobbying efforts were directed primarily at the Ministries of Health and Wellness and Justice regarding:

- The merits of engaging outside counsel to conduct the litigation on behalf of the Crown;
- The merits of compensating outside counsel on a contingent fee basis; and
- The merits of choosing ITRL as the outside counsel to conduct this litigation on behalf of the Crown.

[51] Mr. Wade's lobbying activities consisted primarily of electronic communications and telephone conversations. There were also several meetings with key government officials in both Ministries, including two meetings with then Minister Redford in 2010.

FINDINGS

[52] My findings, based on the evidence accumulated in this investigation, are made within the context of each question which required an answer.

1. Did the Honourable Alison Redford, Q.C., while Minister of Justice for the Province of Alberta, take part in a decision in the course of carrying out her office or powers knowing that the decision might further her private interest, or that of a person directly associated with her, or that of her minor child, and thereby commit a breach of *section 2(1)* of the *Act*?

[53] I do not need to determine whether the actual decision to engage ITRL as counsel for the Crown in the tobacco litigation was that of Premier Redford, as Minister of Justice, for the purpose of the application of *section 2(1*) of the *Act*, because clearly she "took part in a decision" in the course of carrying out her office or powers.

[54] There is absolutely no evidence, nor even a suggestion, that the decision to engage ITRL on the tobacco litigation furthered, or might further, the private interest of Premier Redford, her spouse, or that of her minor child.

[55] The *Act* defines "person directly associated", in *section 1(5)* as follows:

> ***Interpretation***
> *1**(1)** In this Act,*
> . . . .
> ***(5)** For the purposes of this Act, a person is directly associated with a Member if that person is*
>
> *(a) the Member's spouse or adult interdependent partner,*
>
> *(b) a corporation having share capital and carrying on business or activities for profit or gain and the Member is a director or senior officer of the corporation,*
>
> *(c) a private corporation carrying on business or activities for profit or gain and the Member owns or is the beneficial owner of shares of the corporation,*
>
> *(d) a partnership*
>
> *(i) of which the Member is a partner, or*
>
> *(ii) of which one of the partners is a corporation directly associated with the Member by reason of clause (b) or (c), or*
>
> *(e) a person or group of persons acting with the express or implied consent of the Member.*

[56] The *Act* defines "spouse" in *section 1(1)(l)* as follows:

> ***Interpretation***
> *1**(1)** In this Act,*
> . . . .
>
> *(l) "spouse" means the husband or wife of a married person who is a Member but does not include a spouse who is living separate and apart from the Member if the Member and spouse have separated pursuant to a written separation agreement or if their support obligations and family property have been dealt with by a court order;*

[57] Clearly, Mr. Hawkes is not the "spouse" of Premier Redford, as that term is defined in the *Act*. He and Premier Redford separated in 1990 and divorced in 1991. Any financial obligations that each may have had to the other were finalized at the time of their divorce or shortly thereafter. Both have subsequently remarried and have children from their second marriages.

[58] There is no evidence whatsoever that Premier Redford is a partner of JSS Barristers or indeed of any of the law firms comprising the ITRL consortium, nor is there any evidence she

has any kind of business relationship with any of these firms. Indeed there is uncontradicted evidence to the contrary.

[59] I find the participation of Premier Redford, as Minister of Justice, in the decision to engage the ITRL consortium on behalf of the Crown in the tobacco litigation was not a breach of *section 2(1)* of the *Conflicts of Interest Act*.

2. Did the Honourable Alison Redford, Q.C., while Minister of Justice for the Province of Alberta, use her office or powers to influence or to seek to influence a decision to be made by or on behalf of the Crown to further her private interest, or that of a person directly associated with her or her minor child or to improperly further another person's private interest, and thereby commit a breach of *section 3* of the *Act?*

[60] I have already found that nothing Premier Redford, as Minister of Justice, did in relation to the engagement of the ITRL consortium on behalf of the Crown on the tobacco litigation would or might further her private interest, the private interest of her minor child or the private interest of a person directly associated with her. So the issue here is whether her involvement in that engagement constituted "improperly further[ing] another person's private interest", as alleged by Ms. Smith in her request for this investigation.

[61] Consistent, uncontradicted evidence establishes several points.

- The decision whether to engage outside counsel to act on behalf of the Crown is typically made by executive management in the Ministry of Justice.
- Once a decision to engage outside counsel was made, it was usual practice for Mr. Merryweather to contact a firm or firms from a list of firms which might be suitable for engagement by the Crown. Mr. Merryweather would recommend engagement of a particular firm to the executive management team, and if approved, it would be signed off by the Deputy Minister. If the retainer was $20,000 or more or expected to be in excess of $20,000, it would also be signed off by the Minister.
- In this instance Minister Redford directed the Justice Department staff that she wanted a more rigorous and objective process applied. She left it up to the staff to devise and utilize the process.
- Grant Sprague, Q.C., then Assistant Deputy Minister of the Legal Services Division of the Ministry of Justice, was charged with identifying members of the Selection Committee who would work with him to devise the process and then put it into place.
- The Selection Committee was comprised of Mr. Sprague and Mr. Merryweather from the Ministry of Justice and Martin Chamberlain, Q.C., then Assistant Deputy Minister of Corporate Services in Alberta Health and Wellness.
- The Selection Committee devised the process to select counsel and prepared various instruments required to enable as objective a consideration as possible to come to a decision regarding recommendation for engagement.
- The Selection Committee sought expressions of interest from law firms which previously indicated to officials within Justice and Health (and others within government) that they would be interested in taking on the tobacco litigation as well as law firms they expected

from experience would be able to handle litigation of this magnitude. They also requested an open posting on the Alberta Justice website.

- The Selection Committee reviewed all expressions of interest and received presentations from the short list of firms expressing an interest. The Committee compiled an objective analysis of each firm's ability to meet the Department's need of conducting this litigation and provided that analysis to Minister Redford.
- While there were routine progress updates provided to the Minister, there is no evidence whatsoever that the Minister had any involvement in determining who would be on the Selection Committee, what the process would entail or how it should be utilized. There is no evidence the Minister made any suggestions to or directed the Selection Committee regarding which firm or firms should be contacted about providing an expression of interest. The evidence is to the contrary and indeed, there is evidence that on at least one occasion during the process, a firm contacted the Minister directly to express interest in conducting the litigation. In this instance, the Minister referred them to the Selection Committee and the process it had established.
- On the basis of the information provided to the Minister in Briefing Note AR39999, and taking into account the factors mentioned in that Briefing Note, on December 14, 2010, the Minister directed the then Deputy Minister of Justice, Mr. Bodnarek, to enter into negotiations with the ITRL consortium.

[62] A significant part of the responsibility of all Members of the Legislative Assembly is, regardless of party affiliation, to advocate on behalf of constituents and often on behalf of interests of which they may be a part. This is recognized in the Preamble to the *Conflicts of Interest Act*:

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

[63] It is only when a Member uses his or her office improperly to further a particular private interest that he or she will be in breach of *section 3* of the *Act*. How then does one decide whether something done by a Member is an improper use of their office?

- It is clearly a proper use of office for a Member to advocate for government assistance on behalf of constituents who have been flooded out or burned out.
- It is clearly a proper use of office for a Minister to consider recommendations and reports from the public service in their Ministry and make a decision based on those recommendations and reports. Whether there is unanimous agreement with that decision is irrelevant; somebody at some point has to make a decision and that somebody, in government, is the Minister.
- It is clearly an improper use of office for a Member to demand special treatment which would not otherwise be accorded to him or her by a member of the public service.
- It is clearly an improper use of office for a Minister (of Transportation, for example) to direct a contractor paving a highway to pave the road leading off that highway into his or her lands or the lands of some other person.

[64] What can be fairly easily determined at either end of a line stretching from "proper" to "improper" is of little use in determining where the line is drawn in that grey area in between the extreme ends. There is no hard and fast line; the facts and circumstances in each case are unique and ultimately determinative.

[65] How then to determine whether, in this instance, there may have been an improper use of office?

[66] Regarding statutory interpretation, the Supreme Court of Canada has said:

> *Today there is only one principle or approach, namely, 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 [the legislature].*[5]

[67] Therefore, in the process of interpreting "improperly", I must look at:

- the word used;
- the context in which it is used; and
- the purpose of the *Act*.

[68] The complete Oxford English Dictionary has two definitions of "improperly" which may be applied in this context:

a *Not truly or strictly belonging to the thing under consideration; not in accordance with truth, fact, reason, or rule; abnormal, irregular; incorrect, inaccurate, erroneous, wrong.*

and

b *Not in accordance with the nature of the case or the purpose in view; unsuitable, unfit, inappropriate, ill-adapted.*

[69] In my view, the word "improperly" suggests something "not in accordance with the purpose in view".

[70] The reference to "improperly furthering another person's interest" in *section 3* of the *Act* must be contrasted with the balance of *section 3* where a breach is established simply by demonstrating that a Member furthered a private interest.

[5] *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para 21

[71] There is thus a clear distinction between:

- A Member, a person directly associated with a Member or a Member's minor child, where simply furthering a private interest results in a breach; and
- Another person, where only *improperly* furthering a private interest results in a breach.

[72] In the first case, a breach follows automatically if the Member uses the Member's office or powers to influence or seek to influence a decision to further the member's private interest or the private interest of someone closely associated with the Member. That is consistent with the general approach to the interpretation of conflict of interest legislation regarding a member's own interest, where courts say:

> *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 weigh its extent nor amount in determining the issue.* [6]

[73] By contrast in the second case, the *Act* recognizes there are circumstances where it is *proper* for a Member to use the Member's office or powers to influence, or to seek to influence, a decision which is to be made by or on behalf of the Crown to further another person's private interest.

[74] This makes sense because any decision by a Member is likely to affect another person's private interest. Indeed, Members are elected to attempt to ensure government does certain things. Those things may further another person's private interest without undermining integrity. For example:

- Welfare and seniors support programs advance the recipients' private interests; and
- Industry programs advance a sector of an industry or an industry as whole e.g. royalty holidays for certain hydrocarbons advance the recipients' private interest.

[75] Further, in a free market democracy, the generally accepted mechanism for getting things done is to appeal to a person's private interest e.g. any contract approved by a Minister will further the private interest of the contractor; any hiring of office staff by a Member will further the private interest of that staff person. Those things cannot be considered "improper" in and of themselves – there must be something more.

[76] The focus of the *Act* is to ensure ethical conduct and integrity. However, the Preamble to the *Act* also recognizes Members are not cloistered; they come from a broad spectrum of occupations and continue to be active participants in their community. Therefore it makes sense that in *section 3*, the Legislature determined the mere fact of furthering a private interest is not enough to undermine integrity in the discharge of public duties. If it were, no Minister or Member could effectively operate in office.

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[6] *Wananmaker v. Patterson*, [1973] 5 W.W.R. 193 (Alta. C.A.)

[77] Integrity is undermined where the Member uses the Member's office or powers to influence or seek to influence a decision to *improperly* further another person's private interest.

[78] This can also be viewed from the perspective of bias: is there a relationship between the Member and the person whose private interest is furthered by the Member's use of office, such that the Member will necessarily further that private interest regardless of the propriety?

[79] The Honourable Mr. Justice Jean Côté of the Alberta Court of Appeal recently issued an enlightening decision which addressed the issue of allegations of bias on the part of a judge. The case is cited as **Boardwalk REIT LLP v. The City of Edmonton and The Municipal Government Board 2008 ABCA 176 (CanLII)**. In ruling on the issue of the disqualification of a judge for reason of bias, Mr. Justice Côté said:

> *[28] A judge is not disqualified because of "a partiality or a preference or even a displayed special respect for one counsel or another", says the British Columbia Court of Appeal in* ***Middelkamp v. Fraser Valley Real Est. Bd.****,* ***supra*** *(C.A.) at 261 (B.C.L.R.) (para. 11).*
>
> *[29] To have any legal effect, an apprehension of bias must be reasonable, and the grounds must be serious, and substantial. Real likelihood or probability is necessary, not a mere suspicion:* ***R. v. R.D.S.*** *[1997] 3 S.C.R. 484, 532 (para. 112). The threshold is high:* ***id.*** *at 532 (para. 113). The test of appearance to a reasonable neutral observer does not include the very sensitive or scrupulous conscience: see* ***Wewaykum I.B. v. R.****,* ***supra*** *(para. 76); cf.* ***Makowsky v. Doe****,* ***supra*** *(para. 22). This challenge is "favor", not interest, says the British Columbia Court of Appeal in* ***G.W.L. Prop. v. W.R. Grace****,* ***supra****. No reported case disqualifies a judge because of friendship, says the British Columbia Court of Appeal in* ***Wellesley L. Trophy Lodge v. BLD Silviculture****,* ***supra****.*
>
> *[30] Furthermore, a judge is presumed to be faithful to his or her oath, and it takes cogent evidence to displace that, and to show that the judge has done something to create a reasonable informed apprehension of bias: see* ***R. v. R.D.S.****,* ***supra*** *(paras. 32, 49, 112, 117).*
>
> . . . .
>
> *[48] In this area, it is important to proceed rationally, examining actual facts. One must neither rely on mere labels, mental rubber stamps, nor mechanical rules. One must weigh rationales, justice, and practicality, and not lose sight of them:* ***Wewaykum*** *case,* ***supra*** *(at para. 77);* ***Rando Drugs v. Scott****, 2007 ONCA 553, 284 D.L.R. (4th) 756 (Ont. C.A.);* ***Ebner v. Official Trustee, supra*** *(H.C.A.) (paras. 30, 32). The standard is the hypothetical informed observer, who must "view . . . the matter realistically and practically – and having thought the matter through":* ***Cdn. Pac. v. Matsqui I.B.*** *[1995] 1 S.C.R. 3, 50, 177 N.R. 325 (para. 81).*
>
> *[49] That mandatory approach leads to three cautions. First, the rules to disqualify solicitors for conflict of interest are based on presumed confidential knowledge, and are very different from and less flexible than, the grounds to disqualify a judge from sitting: see* ***Kapelus v. U.B.C.*** *(1998) 110 B.C.A.C. 82, 61 B.C.L.R. (3d) 308, 316 (para. 26);* ***Rando Drugs v. Scott****,* ***supra****, at 765 (paras. 28-29). Second, a financial interest is not*

> *the same thing as a state of mind, and the rules for the two differ sharply: see* ***Locabail (U.K.) v. Bayfield Dev. Prop.****,* ***supra****; G.W.L. Prop. v. W.R. Grace, 2008 ABCA 176 (CanLII) Page: 12* ***supra****, at 289; cf.* ***Wewaykum I.B. v. R.****,* ***supra*** *(paras. 69-72). Third, indirectness or degrees of separation heavily dilute both kinds of conflict.*

[80] If Mr. Justice Côté's comments are reflected on in the context of a Minister rendering a decision which will further another person's private interest, one can see the legal test to determine whether the Minister is "disqualified" from rendering that decision because of bias is very high indeed.

[81] But in law, the test to be applied to an elected official is not that which applies to a judge; the threshold is even higher for an elected official. For the purpose of my analysis, I have referenced the "reasonable apprehension bias standard" which is applicable to judges. The courts in fact give a great deal more leeway to Ministers when reviewing their decisions, recognizing their role in the political system. The Supreme Court of Canada has said in relation to administrative decisions makers:

> ***27*** *It can be seen that there is a great diversity of administrative boards. Those that are primarily adjudicative in their functions will be expected to comply with the standard applicable to courts. That is to say that the conduct of the members of the Board should be such that there could be no reasonable apprehension of bias with regard to their decision. At the other end of the scale are boards with popularly elected members such as those dealing with planning and development whose members are municipal councillors. With those boards, the standard will be much more lenient. In order to disqualify the members a challenging party must establish that there has been a pre-judgment of the matter to such an extent that any representations to the contrary would be futile. Administrative boards that deal with matters of policy will be closely comparable to the boards composed of municipal councillors. For those boards, a strict application of a reasonable apprehension of bias as a test might undermine the very role which has been entrusted to them by the legislature.*
> ***Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*** *[1992] 1 S.C.R. 623.*

[82] As one reviews decisions of Ministers to determine whether they are proper or improper, it is important to keep this caution about undermining the proper role of Ministers in mind.

[83] In her Statutory Declaration provided in response to the Written Interrogatories, Premier Redford said:

Q.	INTERROGATORY	ANSWER
18.	Aside from Robert Hawkes, did you personally know any of the other partners at Jensen Shawa Solomon Duguid and Hawkes LLP before your resignation from cabinet in 2011?	I did.
19.	If the answer is yes, which partners did you know and what was your relationship with each?	I knew Glenn Solomon and Carsten Jensen. Glenn Solomon was someone I have known socially, originally through a mutual friend, for close to 20 years. I had occasionally dealt with Carsten Jensen through his work as a Bencher of the Law Society after I became the Minister of Justice. I had also met, but did not know, Stacy Petriuk (she is the sister of a friend of mine) and Rob Armstrong (he was a friend of my sister's).
20.	Before you resigned from Cabinet in 2011, did you have any business dealings personally with the firm Jensen Shawa Solomon Duguid and Hawkes LLP? If yes, please describe the nature of these dealings in general terms.	I did not.
28.	Please describe your involvement in the selection process. Without restricting your response, please describe your involvement in each of the following phases of the process: (a) The decision to use an expression of interest process rather than an RFP process; (b) The identification of firms or consortia to whom documents relating to the expression of interest process would be sent; (c) The criteria to be used for selection of the firm or criteria to be retained by the Government of Alberta; (d) The timing of the selection process; (e) The establishment of a short list of candidates; (f) The selection of the Review Committee	One of the Justice Department's responsibilities involved the retention of outside counsel for the Government of Alberta. The Crown's *Right of Recovery Act* had been passed in 2009 and after discussions with other Departments of the Government, it was determined to proceed with the tobacco litigation. I believe this was announced in the fall of 2010. The Justice Department discussed whether it would be best to proceed internally or with outside counsel. The Department concluded that given the length of time the inquiry would cover, the volume of documents that would be involved and given that the Department had never been involved in an action such as this, it would be best to proceed with external counsel. Prior to this time the Department had been approached by three firms, Bennett Jones, McLennan Ross/Field and Tobacco Recovery Lawyers ("TRL") as to whether they could be of assistance should it be decided to proceed with the litigation. After discussion with Grant Sprague who was the Assistant Deputy Minister

	to review the proposals; (g) The process to be used by the Review Committee in reviewing the proposals; (h) The selection (as reflected in a memorandum signed by you dated December 14, 2010) of the International Tobacco Recovery Lawyers consortium (which included Jensen Shawa Solomon Hawkes and Duguid LLP); and (i) The steps that led to the signing of a retainer agreement in June 2011. Please provide copies of any documents in your power or possession related to the above, including briefing notes; memoranda; emails; letters and telephone notes.	of the Legal Services Division at the time, it was determined to invite expressions of interest from the various law firms. This was an unusual step since normally it did not go through such a process when retaining outside counsel. It was important to me to have this process in view of the fact that a contingency was one of the considerations the Department had to deal with, as was the fact that no one had ever handled this kind of litigation in the province, in addition to the size of the file. We wanted to be transparent in the selection process. Once the decision had been taken to proceed in this fashion, I was informed by the Department that a Review committee (the "Committee") would be set up to consider proposals from various law firms. I had no involvement in the selection of the membership of the Committee. I had no involvement in the selection of the firms who would be considered by the Committee. I was subsequently advised by the Department that the three firms who had been in contact with the Department were contacted and as well an expression of interest came from the Ogilvie firm. The Committee was composed of Lorne Merryweather (Justice), Grant Sprague[7] and Martin Chamberlain (Health). Upon receipt of information from the law firms, the Committee determined, without input from me, which firms which they would meet with and what process they would follow. There was no timeline for this decision, but the Department was anxious to proceed having decided that it would proceed. I was advised that the Committee then met with three of the firms in question. The Department was ultimately advised that the Province would be well represented by anyone of the three firms and received a briefing note to that effect. The memo of December 14, 2010 directed to Deputy Minister Ray Bodnarek, reflected this advice. This was not a decision to retain the TRL group, but to see if a satisfactory arrangement could be worked out with them.

[7] Grant Sprague, Q.C. was also in the Ministry of Justice at the time.

		Thereafter, the Department advised that they would retain external counsel to negotiate an arrangement which would be in the best interests of the Province. I had no involvement in the selection of external counsel to negotiate the contingency agreement on behalf of the province, nor did I have any involvement in the terms of the retainer of external counsel for that purpose. I am informed that ultimately, and well after I had left the Justice Department, an agreement was reached to retain the TRL group on this matter. I had no involvement in the negotiation of the terms of the TRL retainer. I am not aware of the specifics of the process used by the review committee to arrive at their final recommendations. I have no such documents in my possession.
29.	There is a memorandum from you to the Deputy Minister Ray Bodnarek, Q.C. dated December 14, 2010 that reads: *Subject: Tobacco Litigation* *Thank you for preparing briefing note AR 39999 regarding Tobacco Litigation. I note that the Review Committee considers all three Arms interviewed to be capable of adequately conducting the litigation and believes that while no consortium stood above the others, all three have unique strengths and weaknesses.* *Considering the perceived conflicts of interest, actual conflicts of interest, the structure of the contingency arrangement and the importance of a "made in Alberta" litigation plan, the best choice for Alberta will be the International Tobacco Recovery Lawyers.* (a) When did you sign this memo? (b) Who prepared the wording of this memo?	In turn: (a) I cannot recall specifically, however, my general practice is to sign such documents on or about the date indicated on the document; (b) I am not aware of the specific individual in the Department who drafted the memo. (c) I do not know. (d) I do not have it. (e) I was advised by the Department that Bennett Jones was, at the time, acting for multiple other provinces and would have had split loyalties in representing the Province of Alberta. In addition, I was advised that Bennett Jones routinely represented the Canadian Medical Protective Association and was opposite the Government of Alberta on a number of the Department of Health's Third Party Liability files. During the selection process the Department asked for a commitment that each of the bidders would agree to represent only Alberta. Bennett Jones declined to provide that commitment. I was advised that these would be potential conflicts of interest in the conduct of the file and therefore are the perceived conflicts which are referred to;

	(c) When was this memo prepared? (d) Please provide a copy of briefing note AR 39999. (e) . What are the "perceived conflicts of interest" to which you refer? (f) What are the actual conflicts of interest to which you refer? (g) What is the issue with the "structure of the contingency arrangement" to which you refer? (h) What do you mean by "a made in Alberta" litigation plan?	(f) I am also advised by the Department that the Field/McLennan Ross coalition had a partner who had, at one time, done work for one of the proposed tobacco defendants. Based on the history of the tobacco litigation in other provinces that was certain to lead to a multi-year fight in which the Defendants would apply to have counsel removed from the record, followed by multiple appeals. I was advised that this was an actual conflict of interest; (g) The Department was concerned about how the lawsuit would be financed, and if a contingency was able to be achieved, what would the up front payments be; (h) TRL had developed a plan to advance the Action which had not, to the Department's knowledge, been tried in the other jurisdictions.
43.	Please provide any other information that you consider necessary and relevant to this investigation.	It is true that I had a close personal relationship with Mr. Hawkes that ended in 1990. He and I had relatively little contact, with a few exceptions as noted above, until February of 2011, when we again interacted much more closely for the duration of my leadership campaign and in the weeks following. It is also true that I knew two other JSS Barristers' Partners and had met a couple of other Partners socially. However, my connections to the Bennett Jones firm far exceeded my connections to the JSS firm. Similarly, I have a number of connections to the Field/McLennan Ross firms. . . . .

[84] In regard to this portion of the answer to Q. 43, Mr. Odsen questioned Premier Redford in my presence, on November 1, 2013. The transcript follows:

> (Proceedings commenced at 2:15 p.m.)
>
> PREMIER ALISON REDFORD, interviewed by Mr. Odsen, Q.C.
>
> MR. ODSEN: Premier, you indicated, you may recall, in your response to a written interrogatory question number 43 that while it is true that you knew Mr. Hawkes and two other partners at JSS your, quote, "connections to the Bennett Jones firm far exceeded my connections to the JSS firm. Similarly, I have a number of connections to the Field/McLennan Ross firm."

PREMIER REDFORD: Right.

MR. ODSEN: Could you expand on that a little bit for us, please? What did you mean by saying your connection with Bennett Jones and perhaps McLennan Ross/Field far exceeded your connections with JSS?

PREMIER REDFORD: Well, it's clear that I knew people at all three firms, and my sense was that there seemed to be a perspective that because I knew people at that firm that something untoward had happened. And I wanted to make the point that I am a lawyer. I know lots of lawyers around the province. I was also the Minister of Justice and have met a lot of lawyers and have personal friendships with many. And certainly had those with lawyers at all three firms, including McLennan Ross/Field; people like Mike Casey, who was president of the Stampede board; Dan Downe, who was a brother-in-law to a friend of mine; and others. So that was all.

MR. ODSEN: I believe I've heard you quoted in the press from time to time as having had almost like Peter Lougheed being kind of a mentor of yours. Is that kind of the case?

PREMIER REDFORD: Sure. There's the headline over there.

MR. ODSEN: Yes. And he, of course, was with Bennett Jones?

PREMIER REDFORD: He was. He was with Bennett Jones. And I remember having many wonderful conversations with him in the office and outside of the office. So certainly close there. Our party's counsel I think was at Bennett Jones, is at Bennett Jones.

MR. ODSEN: Right.

PREMIER REDFORD: And I have had in my own personal life, well before this job, have had a few legal issues that came up in the context of partnership disputes and had counsel at Bennett Jones there, Ken Lenz. I'm sure there are more, but those are the ones that come to mind.

MR. ODSEN: Sure. And that's good. It's, just as I say, we wanted to get a bit of a sense --

PREMIER REDFORD: Sure.

MR. ODSEN: -- of what you were talking about when you said that. Okay.

PREMIER REDFORD: In fact Mike Casey, as president of the Stampede, is really a close friendship. He invites me personally to ride with him in the Stampede parade every year, which I think is a great privilege; one I never thought I would have in my life.

[85] I find it unremarkable that lawyers know other lawyers; I find it unremarkable that the Minister of Justice knew Benchers of the Law Society of Alberta and other prominent members of the legal community.

[86] Taking all of the foregoing into account, the comments of Mr. Justice Côté, the Supreme Court of Canada, and the clear and consistent evidence from all witnesses, all leads to only one legal and reasonable conclusion.

[87] I find that the Honourable Alison Redford, Q.C., as Minister of Justice, directed Ministry of Justice officials to devise an objective process for determining which firm or consortium of firms would be recommended for engagement on the tobacco litigation. I find this was done within the Ministry of Justice, and that she had no involvement in the design of the process, its application, or the resulting Memorandum (Briefing Note AR39999) containing the Selection Committee's advice to the Minister.

[88] I find it is entirely appropriate that a Minister, charged with the authority and responsibility for a final decision on a matter, exercise that authority to render a decision. I further find that in this instance there is no evidence of arbitrariness, unreasonableness, favouritism, nepotism, or anything untoward in Premier Redford's participation, as Minister of Justice, in the decision to direct Ministry officials to commence negotiations with the ITRL consortium.

[89] Much has been made of the fact that this is a "ten billion dollar" lawsuit. Since, the ITRL consortium is retained on a contingent fee basis, there is a perception that this necessarily means that when the action is finally concluded, members of the ITRL consortium, and by extension all individuals comprising the various law firms in the consortium, are certain to be handsomely compensated for their legal efforts.

[90] I do not believe this is necessarily the case. Those advancing that proposition appear to lack a full appreciation of the logistics of an action such as this. As I have already noted, a similar action has been before the B.C. courts since 2001 and has yet to get to trial. While it might be reasonable to expect that at least some of the interlocutory issues that have been tying this action up in the B.C. court will have been dealt with by the time things get underway in Alberta, there is every reason to believe that issues unique to Alberta will have to be dealt with and that will undoubtedly take years to resolve.

[91] It is impossible to know how long the trial of an action such as this might take, but I expect the length would be measured in months, if not years. Once a decision is issued after trial, the appeal process begins, and that too, would be expected to take years. It will be enormously costly to the lawyers involved and there is no guarantee this cost will be recovered once it does finally conclude.

[92] Mr. Hawkes' evidence in this regard is instructive; he states in his Statutory Declaration:

	QUESTION	ANSWER
13.	Will you, as a partner of JSS Barristers, share in any income that may result from a successful resolution of the litigation against tobacco companies that is being conducted by JSS Barristers and TRL on behalf of the Government of Alberta? Please describe in general terms how that income would be shared.	If TRL becomes entitled to be compensated by payment of a portion of any tobacco recovery proceeds, pursuant to the contingency agreement between TRL and the Government of Alberta (the "GOA"), those proceeds will go first to repay disbursements and then be split in accordance with a formula previously agreed to between the TRL partners. A portion of those proceeds would go to the Alberta partners and I would be entitled to a share of that portion. To be clear, my interest in that portion will be no different than my interest in the other net income of JSS Barristers throughout the period that our firm is working on the tobacco file for the GOA.
14.	Please describe any exposure to loss that you may face if the litigation against tobacco companies that is being conducted by JSS Barristers and TRL on behalf of the Government of Alberta is not successfully resolved? Please describe in general terms how that loss would be shared.	Currently JSS Barristers is putting a very significant amount of time per year into the file. That amount is anticipated to escalate as the matter proceeds. The disbursements on the file are being partially funded by one of TRL's partners, up to a maximum amount. If the file concludes unsuccessfully, our firm will lose: • The value of all of that time; and • Our proportionate share of any disbursements over and above the limit referred to above. In that event my share of the loss would be precisely equal to my share of any income if the file concludes successfully.

[93] *Section 3* of the *Conflicts of Interest Act* says:

> ***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.*

[94] *Section 3* of the *Conflicts of Interest Act* does not say "might further"; whether the private interest of JSS Barristers or Mr. Hawkes has been furthered by its engagement on behalf of the Crown to conduct the tobacco litigation is something that will not be determined for many years. But it is not necessary for me to decide this particular issue because of my decision concerning the applicability of "improper" to Premier Redford's actions at the time.

[95] I find the participation of Premier Redford, as Minister of Justice, in the decision to engage the ITRL consortium on behalf of the Crown in the tobacco litigation was not a breach of *section 3* of the *Conflicts of Interest Act*.

3. Did the Honourable Alison Redford, Q.C., while Minister of Justice for the Province of Alberta, use or communicate information not available to the general public that was gained by her in the course of carrying out her office or powers to further or seek to further her private interest or another person's private interest, and thereby commit a breach of *section 4* of the *Act*?

[96] I have already discussed evidence disclosed concerning the chain of events leading up to the formation of the ITRL consortium in Alberta, and the engagement of Mr. Wade to lobby on the consortium's behalf. There is no evidence contradicting this evidence, and there is clear and cogent evidence that there was no communication at any time between Premier Redford, as Minister of Justice, with Mr. Wade, Mr. Hawkes or anyone outside the Government of Alberta concerning the tobacco litigation in advance of presentation of Bill 48 in the Assembly.

[97] It is speculative to suggest the only way Mr. Wade or the ITRL consortium knew the tobacco legislation would be forthcoming is that it was communicated to some or all of them by the Minister. The evidence discloses that those in the legal profession who regularly engage in civil litigation are keenly attuned to potential business opportunities. That the Ontario and Florida law firms who were already engaged in this litigation in other jurisdictions should see the potential for additional business in Alberta and take steps to be ready when the opportunity arose is also unremarkable.

[98] I find that Premier Redford, as Minister of Justice, did not breach *section 4* of the *Conflicts of Interest Act*.

4. Did the Honourable Alison Redford, Q.C., while Minister of Justice for the Province of Alberta, conduct herself in such a way in relation to this particular matter that she breached the spirit of the *Act,* as stated in the Preamble to the *Act*? And if so, does such breach of the spirit of the *Act* constitute an actual breach of the *Act*?

[99] Having found that Premier Redford, as Minister of Justice, did not breach any of the sections of the *Conflict of Interest Act*, it would fly in the face of law, logic and reason to find that she nonetheless somehow breached the spirit of the *Act* as contained in the Preamble to the *Act*.

[100] The evidence is clear that Premier Redford did everything that a Minister would be expected to do in serving the public interest, and did so in a forthright, objective and unbiased manner.

[101] I find that Premier Redford, as Minister of Justice, did not breach the spirit of the *Conflicts of Interest Act*. I further note that the Preamble of an *Act*, while helpful in providing a context for the interpretation of the actual sections of the *Act*, does not in law form a part of this *Act*, and that it is therefore impossible, in law, to breach the Preamble to this *Act*. *Section 12(1)* of the *Interpretation Act* states the law in Alberta in this regard:

> ***12(1)*** *The preamble of an enactment is a part of the enactment intended to assist in explaining the enactment*

[102] A Preamble is an aid to interpretation, not an enforceable provision.

CONCLUSIONS

1. Introductory Comments

[103] It bears repeating that this Office, and all other like Offices across Canada, start with the proposition that:

> ***All*** *Members, regardless of party affiliation, are decent and honourable people who have sought election to serve the public interest.*

[104] Certainly, vigorous debate over the means whereby the public interest may best be advanced is a sign of a healthy democracy, but there is no place for personal attacks on the character of individual Members in pursuit of public policy objectives.

[105] Foundational to our free and democratic society is the citizen's right to due process and to be presumed innocent until proven guilty; the standard of proof required varies in law and I will address that below.

[106] Finally, a person's reputation is one of the most personal and precious aspects of their life and it should not be rashly impugned.

[107] All Members, of every partisan stripe, would do well to remember this point. Members should reflect on the fact that when they aim criticism at individuals in the Legislative Assembly and in the media, which speak to the character of the individual rather than their position on a matter, that criticism reflects negatively on all Members, not just those at whom they aim their barbs. As the Preamble to the *Conflicts of Interest Act* has been raised as being relevant to this investigation, I draw Members' attention again to the words of the Preamble (with my emphasis added):

> ***Preamble***
>
> *WHEREAS the ethical conduct of elected officials is expected in democracies;*
>
> *WHEREAS Members of the Legislative Assembly can serve Albertans most effectively if they come from a spectrum of occupations and continue to participate actively in the community;*
>
> ***WHEREAS Members of the Legislative Assembly are expected to perform their duties of office and arrange their private affairs in a manner that promotes public confidence and trust in the integrity of each Member, that maintains the Assembly's dignity and that justifies the respect in which society holds the Assembly and its Members****; and*

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

2. Evidentiary Standard Applied

[108] In 2006, the Honourable Coulter A. Osborne, Ontario Integrity Commissioner, issued an Investigation Report concerning MPP Harinder Takhar, Minister of Transportation, which said:

> *[68] Allegations of breaches of the Act may have serious consequences, both under the Act and politically. Thus, I think allegations such as those raised here must be established by clear and convincing evidence, a standard between the civil balance of probability and the criminal beyond a reasonable doubt standards of proof.*

[109] The Supreme Court of Canada, in 2008[8], considered the standard of proof that applies to non-criminal matters. After an exhaustive analysis of the jurisprudence, the Honourable Mr. Justice Marshall Rothstein, speaking for a unanimous court, said:

> *[49] In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.*

[110] While the standard of proof enunciated by the Ontario Integrity Commissioner in *Takhar* commends itself to me for investigations under conflicts of interest legislation, there can be no doubt that the standard of "proof on a balance of probabilities", as clearly stated by the Supreme Court of Canada, is the standard to be applied, and is the standard I applied in this investigation.

3. Conclusions Regarding the Honourable Alison Redford, Q.C.

[111] The evidence gathered in this investigation is clear, consistent, cogent and uncontradicted. The role played by Premier Redford, as Minister of Justice, in the decision by the Alberta Government to enter into an engagement with the International Tobacco Recovery Lawyers consortium to conduct the Crown's case in the tobacco litigation was an entirely proper exercise of her office as Minister of Justice, and in the public interest.

[112] For the reasons stated in my Findings, I conclude Premier Redford, as Minister of Justice, did not breach *section 2*, did not *breach section 3*, did not breach *section 4*, nor "offend" the principles contained in the Preamble of the *Conflicts of Interest Act*.

[113] For the greater good and especially for those Members and Senior Officials who are guided and judged by the *Conflicts of Interest Act*, it is important to note how this investigation could have been avoided. Prevention, not punishment, is the objective of not just this Office, but of all Commissioners and their staff across Canada. For those subject to this *Act*, there is a way to avoid these costly, sensitive and difficult investigations. This office exists to guide all

[8] *FH v McDougall* 2008 SCC 38.

Members through ethical issues and if a Member approaches this office for advice and then follows that advice, by operation of *section 43(5)* of the *Act*, no proceeding or prosecution shall be taken against the Member. Had that occurred in this matter, then this investigation and report could have been avoided.

[114] Pursuant to *section 25(8)* of the *Act*, a preliminary draft of this investigation report was provided to Premier Redford's counsel and comments and submissions invited. The response was received on December 3, 2013, and the report finalized immediately thereafter.

RECOMMENDATIONS/SANCTIONS

[115] As there were no breaches of the *Conflicts of the Act* found, no sanction is warranted or recommended.

Neil Wilkinson
Ethics Commissioner

Dated: December 4, 2013

Appendix A

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William Shores, Q.C.
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Dear Mr. Jones and Mr. Shores,

Re: Ethics Commissioner Matter

I am instructed in this matter by the letter of Bradley V. Odsen, Q.C., General Counsel, Office of the Ethics Commissioner dated September 30, 2013, a copy of which is enclosed.

The letter asks me to communicate my responses to "Mr. Jones and the Office of the Ethics Commissioner" but since the latter is represented by outside counsel, Mr. Bill Shores, I thought it proper to address my reply to him rather than his client, the Ethics Commissioner.

In the course of investigating certain allegations against the Honorable Alison Redford (Redford), counsel was met with objections to some questions and a refusal to produce some documents on the grounds of privilege.

In particular, Briefing Note AR39999 in the possession of the Province was of interest to counsel for the Commissioner but its production was refused on the ground of privilege.

The Commissioner feels obliged to consider all relevant evidence and because Redford appears to have relied on Briefing Note AR39999 in making the decision which is central to this investigation, a compromise has been reached by counsel whereby due attention can be given to the Briefing Note without breaching privilege.

To that end, I have been asked to read the Briefing Note, Redford's Memo of decision, her answers to some written interrogatories, as well as written responses of four departmental lawyers to questions of the Ethics Commissioner. Copies of all of these documents are included with this letter, except for the privileged Briefing Note.

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Mr. Shores, for the Commissioner, has seen all the documents except for the Briefing Note itself which Mr. Jones has allowed me to see in confidence. I have been asked five questions relating to the above noted documents and I am required to give a yes or no answer to each.

In the circumstances, I cannot give full reasons because to do so would be to indirectly disclose the contents of privileged AR39999.

I am retained by the Government of Alberta, but am instructed to provide my answers independently.

Redford is said to have breached section 3 of the *Conflicts of Interest Act*:

> *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.*

Mr. Odsen's letter is comprehensive and self-explanatory. I answer all five questions in the negative, and while I am constrained in giving reasons by the need to avoid revealing the contents of Briefing Note AR39999, I thought that the repetition of some essential background as well as some commentary supporting my answers might be helpful.

The Province decided to sue certain tobacco interests for damages related to monies spent on health care for victims of tobacco related illnesses. Alberta awarded the contract for its representation in the litigation to Tobacco Recovery Lawyers LLP, an international consortium of lawyers of which the firm Jensen Shawa and Solomon LLP of Calgary is a part. Leaders of two opposition parties in the Legislature, the Honorable Raj Sherman and the Honorable Danielle Smith (Sherman and Smith) complained to the Ethics Commissioner about the conduct of Redford in this selection process.

Redford's former husband Robert Hawkes (Hawkes) is a member of Jensen Shawa and Solomon, and the complaint turns on the question of whether a private interest of Hawkes or his firm was improperly furthered.

Redford and Hawkes were married in 1986 and divorced in 1991. There were no children of the marriage. No property, alimony or maintenance issues followed the divorce.

Hawkes and Redford shared an interest in Conservative party affairs both provincially and federally and occasionally met or called about such matters.

The impending tobacco litigation piqued the interest of the legal community, including Hawkes' firm. He told Redford that the firm was likely to submit a proposal, as part of a

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coalition of firms, to represent Alberta in the tobacco litigation. Redford replied that the process would be merit based. That was the extent of their conversation on the subject prior to the awarding of the contract. Redford, at the time, was Justice Minister in the Alberta Government serving as such in the years 2008-2011 inclusive but in 2011 she resigned her portfolio to seek leadership of the Progressive Conservative Party, which she won. She is currently Premier of the province.

During the years mentioned Hawkes contributed money to the party, but did not communicate with Redford about his contributions. Other lawyers, some from Hawkes' firm have also made contributions to the Party, and included amongst them were firms interested in getting the litigation work.

Hawkes served as Chair of Redford's campaign team for leadership in 2011 and served for a period of a few weeks on her transition team following her appointment as Premier in October 2011.

Due to the complexity of the lawsuit and the lack of experience within Alberta Justice in tobacco litigation, Redford, while Justice Minister, decided to engage outside counsel.

A review committee, not appointed by Redford, from within Alberta Justice and Alberta Health and Wellness, examined the expressions of interested law firms and chose three to interview.

The committee reported to the Deputy Minister that any one of the three firms would be satisfactory.

The Province chose International Tobacco Recovery Lawyers in view of "... the perceived conflicts of interests, actual conflicts of interest, the structure of the contingency arrangement and the importance of a 'made in Alberta' litigation plan...".The quote is taken from a Memorandum dated December 14, 2010 from Redford to Bodnarek, then Deputy Minister of Justice and Deputy Attorney General.

A contingency agreement was negotiated with the help of external counsel chosen by Alberta Justice without the involvement of Redford. Her resignation as Minister of Justice came on February 16, 2011.

After protracted negotiations, the new Minister Verlyn Olsen authorized a form of contingency agreement between the Province and International Tobacco Recovery Lawyers.

With that background, I now turn to my responses to each question:

Appendix A

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QUESTION 1: Is there any information in Briefing Note AR 39999 that suggests there was any interference by or on behalf of Redford in relation to the content of the Briefing Note or the way in which the information in the Memorandum was provided?

There are two questions here, the first dealing with the possible interference by Redford in the content of the Briefing Note. My reading of AR39999 reveals no suggestion of interference.

The second part of the question, as I understand it, has to do with the form of the Briefing Note. I am asked if the way in which the information in the Memorandum was provided suggests interference.

My answer is "no".

QUESTION 2: Is there anything in Briefing Note AR 39999 that contradicts the responses provided by Alison Redford, Q.C. to Written Interrogatory Questions #28, #29 and 43?

My answer to this question is "no".

QUESTION 3: Is there anything in Briefing Note AR 39999 that would suggest, or from which it could be inferred, that Redford's decision as to Tobacco Recovery lawyers as the best choice for Alberta was made to "to improperly further the private interest" of Hawkes or the Jensen Shawa Solomon LLP firm.

My response is "no", both as to suggestion and inference.

QUESTION 4: Is there anything in Briefing Note AR 39999 that would suggest, or from which it could be inferred, that Redford's decision:

a. Was not consistent with the facts and issues presented to her in the Briefing Note?

b. Was made for a purpose that did not have proper regard for the public interest?

The answer to both parts a. and b. is "no".

Redford's decision reflects the facts and issues presented the Briefing Note and the Briefing Note itself reveals no purpose contrary to the public interest which might have motivated the decision.

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I cannot be more specific in my answers to questions 1-4 inclusive without risking disclosure, however oblique, of the contents of the Briefing Note.

QUESTION 5: Having regard for the content of Briefing Note AR 39999 and the responses of the lawyers, is the decision set out in the December 14, 2010, memorandum unreasonable?

This question requires a comparison of the Briefing Note, the responses of the four lawyers and the decision of December 14, 2010. Here again, my answer is "no" but fuller reasons cannot be given.

I will mention that in response to many highly relevant questions concerning personal knowledge or documents, the four lawyers asserted privilege.

I am asked whether the Minister's decision of December 14, 2010 is unreasonable in light of Briefing Note AR39999 and the responses of the lawyers.

One must resist the inference that their frequent claims of privilege were merely "convenient". Once made and unchallenged, a claim of privilege stands as a complete bar to the transfer of information without further explanation. It would be wrong to infer that the Minister's decision of December 14, 2010 is unreasonable because some members of her department or of Health and Wellness declined on the ground of privilege to disclose something.

In my view, nothing which appears in the answers of the lawyers, in Briefing Note AR39999 or in the decision of December 14, 2010 makes that decision unreasonable.

I wish to thank the offices of Shores Jardine LLP, external counsel to the Office of the Ethics Commissioner for the use of office space, and secretarial support, as well as for their gracious hospitality.

I remain,

Edward P. MacCallum

Dated this 4th day of October, 2013.