

### **Ruling on Interpretation of the Terms of Reference**

1. On July 4, 2019, the Government of Alberta established by Order in Council 125/2019 the Public Inquiry into Anti-Alberta Energy Campaigns (“**Commission**”). I was appointed the Commissioner for the Inquiry.
2. Part way through my mandate, the Government of Alberta twice amended the Terms of Reference by way of Orders in Council 191/2020 and 249/2020. For reference, a conformed version of the Terms of Reference, prepared by the Commission, is attached as Schedule ‘A’. My interpretation that follows is based on the Terms of Reference, as amended. This ruling is made on my own motion to explain how I interpret the Terms of Reference.

## Background

3. A critical task for the Commission is to determine whether foreign individuals or organizations have provided financial resources in opposition to the continued operation or further development of the Alberta oil and gas industry.

## Anti-Alberta Energy Campaigns

4. The term “anti-Alberta energy campaign” is defined in the Terms of Reference as:

*attempts to directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources and the transportation of those resources to commercial markets, by any means, which may include, by the dissemination of misleading or false information.*

5. This definition must be read considering its text, the surrounding context and purpose of the Terms of Reference and the *Public Inquiries Act*. There are multiple parts to this definition, which it is helpful to break out to demonstrate what I interpret to be the mandate of the Commission.
6. First, such a campaign involves opposition to the development of Alberta’s oil and gas resources. Reading the definition in its context and in light of the preamble of the Terms of Reference, I consider my mandate to be to inquire into efforts to frustrate the development of Alberta’s oil and gas resources in a broad and general sense. Such frustration may be the stated objective of a party, or may manifest itself through repeated opposition to attempts to develop Alberta’s oil and gas resources or opposition to a particular project in furtherance of an intention of opposing development of Alberta’s oil and gas resources in a broad and general sense. For clarity, I do not consider that a party is attempting to oppose the development of Alberta’s oil and gas resources in a broad and general sense solely by reason of such party opposing a discrete aspect of a specific project, or by isolated opposition on

specific grounds to a particular project (such as where a party's interests in land or traditional rights may be directly affected).

7. Second, I do not interpret it to be my role to determine whether a particular project is "economic, efficient and responsible". Alberta and Canada have regulatory frameworks set up to make these determinations, which I do not interpret as my mandate to duplicate. Moreover, the Commission does not have the resources or time necessary to review the merits of individual projects at the regulatory level. Accordingly, I will proceed from the basis that some level of oil and gas development in Alberta is "economic, efficient and responsible" and focus on opposition to development Alberta's oil and gas resources in a broad and general sense.
8. Third, the term "anti-Alberta", in my view, uses Alberta as a geographical modifier, and clarifies that the Commission's mandate pertains to oil and gas resources located in Alberta, mindful that a party's opposition might be targeted at Alberta's oil and gas resources specifically, or concern a broader collection of oil and gas resources, of which Alberta's particular resources are a subset. I do not interpret the term "anti-Alberta" as indicating that the Commission is to inquire in to whether opposition to oil and gas development in Alberta is "against Alberta" or its interests in some sense. As I interpret the Terms of Reference, the Commission's mandate is not to determine whether support or opposition to oil and gas development in Alberta is pro- or anti-"Albertan"; rather, it involves an examination of issues affecting development of oil and gas resources located in Alberta.
9. Fourth, though the Terms of Reference permit (and do not require) inquiry into "the dissemination of misleading and false information" as a means of opposing the development of Alberta's oil and gas resources, it is not anticipated that determinations of whether particular statements are "misleading or false" will be the primary focus of the Commission. Such a focus is unlikely to be feasible within the resources or time available to the Commission. A finding that a particular person has disseminated "misleading or false" information for the purpose of opposing oil and gas development in Alberta could carry significant reputational consequences, and is not a finding I would be prepared to make lightly and without undertaking extensive measures to explore, test and determine the underlying facts. In many, if not most, cases evaluation of whether a statement made in opposition to the development of Alberta's oil and gas resources is "misleading or false" is an enormous task, and impractical for the Commission to undertake within the resources available to it.
10. To illustrate, evaluating whether a particular statement is misleading or false could require the Commission to undertake a scientific inquiry akin to that carried out in a regulatory review of a proposed project, but for the entire oil and gas industry in Alberta. Such analysis could require extensive scientific evidence and experts on such matters as hydrology, air pollution, agrology, aquatic biology, wildlife biology, ornithology chemical engineering, geology and seismology, among others. Moreover, while it would be possible (if not practicable) to compile this scientific evidence in Alberta, at incredible expense and over several years, the challenge would be compounded by the difficulty, or even impossibility, of obtaining reliable data from or relating to other key oil and gas producing countries. Further, even if all the necessary scientific evidence were obtained, hearings during which that evidence would be

presented and challenged would span many months, if not years. Again, the Commission has neither the budget nor sufficient time to carry out such a colossal undertaking.

## Foreign Funding

11. Insofar as I may be required to interpret section 2(1)(a) of the terms of reference, I consider a foreign organization that has “evinced an intent harmful or injurious” to Alberta’s oil and gas industry to be a foreign organization that has evinced, either through statements or actions, a broad and general opposition to the continued operation or expansion of either all or a part of Alberta’s oil and gas industry, whether in regards to exploration, development, extraction, storage, transportation, processing, upgrading or refining.

## Findings and Recommendation

12. The information identified by the Commission will be disclosed to the potentially affected Participants to provide them with a reasonable opportunity to comment and correct any details. Based on the information identified by the Commission and the information and submissions of potentially affected organizations, I will make such findings and recommendations as I consider advisable. The findings and recommendations of the Commission will be set out in my final report.

## **SCHEDULE A**

### **Terms of Reference**

#### **Definitions**

**1** In these Terms of Reference,

- (a) “Alberta oil and gas industry” means
  - (i) any and all aspects of Alberta’s petroleum and natural gas sectors, including the exploration, development, extraction, storage, processing, upgrading and refining of Alberta’s oil and gas resources, and
  - (ii) any aspect of marketing and delivery of Alberta’s oil and gas resources to commercial markets by any mode of transportation whatsoever, including both railways and pipelines falling under provincial or federal jurisdiction;
- (b) “anti-Alberta energy campaign” means attempts to directly or indirectly delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources and the transportation of those resources to commercial markets, by any means, which may include, by the dissemination of misleading or false information;
- (c) “Minister” means the Minister of Energy.

#### **Mandate of commissioner**

**2(1)** The commissioner shall inquire into the role of foreign funding, if any, in anti-Alberta energy campaigns, and in doing so shall inquire into matters including, but not limited to, the following:

- (a) whether any foreign organization that has evinced an intent harmful or injurious to the Alberta oil and gas industry has provided financial assistance to a Canadian organization, which may include any Canadian organization that has disseminated misleading or false information about the Alberta oil and gas industry;
- (b) whether any Canadian organization referred to in clause (a) has also received grants or other discretionary funding from the government of Alberta, from municipal, provincial or territorial governments in Canada or from the Government of Canada;
- (c) whether any Canadian organization referred to in clause (a) has charitable status in Canada.

**(2)** As part of the inquiry, the commissioner shall examine the work completed by other investigations in other jurisdictions into similar activities or alleged activities, including but not limited to the following:

- (a) the 2017 report by the Office of the Director of National Intelligence of the United States of America, entitled *Background to 'Assessing Russian Activities and Intentions in Recent US Elections': The Analytic Process and Cyber Incident Attribution*;
- (b) the 2018 United States House of Representatives Committee on Science, Space and Technology Majority Staff Report, entitled *Russian Attempts to Influence U.S. Domestic Energy Markets by Exploiting Social Media*.

(3) The commissioner shall make such findings and recommendations as the commissioner considers advisable, and may make findings and recommendations to achieve the following:

- (a) make the Government of Alberta and Albertans generally aware of whether foreign funds are being provided in the manner described in subsection (1)(a);
- (b) enable the Government of Alberta to respond effectively if any anti-Alberta energy campaigns are funded, in whole or in part, in the manner described in subsection (1)(a);
- (c) assist the Government of Alberta by recommending any additional eligibility criteria that should be considered when issuing government grants;
- (d) assist the Government of Alberta by recommending the interpretation of existing eligibility criteria or the creation of new eligibility criteria for attaining or maintaining charitable status.

### **Report and timeline**

**3(1)** The commissioner shall prepare an interim report with advice, proposals, recommendations, analyses or policy options related to the inquiry and submit the report to the Minister no later than January 31, 2020.

**(2)** The commissioner shall prepare a final report setting out the findings and recommendations of the commissioner and submit the final report to the Minister no later than January 31, 2021.

**(3)** The Minister shall cause the final report to be published within 90 days of receiving it from the commissioner.

### **Amendment of Terms of Reference**

**4** The commissioner may request, through the Minister, that the Lieutenant Governor in Council amend any provision of these Terms of Reference if the commissioner is of the opinion that amendment is necessary for the proper conduct of the inquiry.

### **Policy respecting standing**

**5** The commissioner may grant standing to participate in the inquiry only if, in the opinion of the commissioner,

- (a) the applicant is or may be directly or substantially affected by the subject-matter of the inquiry, or
- (b) the applicant has a clearly ascertainable interest or perspective that ought to be separately represented at the inquiry in order to assist the inquiry to fulfill its mandate.

### **Policy respecting financial assistance**

**6(1)** The commissioner shall develop a policy on whether or not financial assistance will be provided to witnesses or interveners in respect of their participation in the inquiry process.

**(2)** If the policy referred to in subsection (1) allows financial assistance, the policy shall reflect the requirement that financial assistance may only be provided if the witness or intervener

- (a) demonstrates that he or she would not be able to participate in the inquiry without such financial assistance,
- (b) has a substantial, direct or clearly ascertainable interest in the subject-matter of the inquiry,
- (c) has a perspective that would advance the purposes of the inquiry, which cannot be acquired any other way,
- (d) has clearly outlined his or her proposed involvement in the inquiry and the estimated costs to be incurred, and
- (e) has provided a written proposal as to how the witness or intervener would account for the financial assistance received.

**(3)** If the commissioner determines that financial assistance will be provided to a witness or intervener in accordance with the policy under subsection (1),

- (a) costs for legal counsel shall only be provided in accordance with the Government of Alberta's established rates for retaining external legal counsel, and
- (b) disbursements shall only be provided in accordance with the Court of Queen's Bench Costs Manual.

**(4)** The policy referred to in subsection (1) shall be submitted to the Minister for review and approval by July 31, 2019.

**(5)** If the Minister approves the policy referred to in subsection (1), the commissioner shall publish the policy.

## **Budget for inquiry**

**7(1)** The total budget for the inquiry shall not exceed \$3 500 000.

**(2)** The following expenses shall be paid out of the budget referred to in subsection (1):

- (a) the commissioner's remuneration;
- (b) compensation for the following:
  - (i) executive support to the commissioner;
  - (ii) retention of legal staff;
  - (iii) retention of experts;
- (c) travel costs for the commissioner and those identified in clause (b);
- (d) financial assistance, if any, provided pursuant to section 6;
- (e) other costs associated with the inquiry that are not covered by section 8.

**(3)** The commissioner shall prepare a detailed budget and submit it to the Minister for review and approval by July 31, 2019.

**(3.1)** The commissioner shall prepare a revised detailed budget and submit it to the Minister for review and approval by July 6, 2020.

**(4)** The commissioner shall put in place a system of budget monitoring and expenditure reporting to the Minister.

**(5)** The Minister shall fund the inquiry, including the compensation of the commissioner, in accordance with the approved budget.

## **Administrative support**

**8(1)** In this section, "administrative support" means

- (a) provision of office and hearing space;
- (b) provision of security services;
- (c) development and maintenance of a website;

- (d) provision of clerks, reporters, researchers and assistants;
- (e) provision of services related to bookkeeping and accounting;
- (f) provision of social media support;
- (g) provision of communications support;
- (h) provision of other services necessary to ensure the effective functioning of the office of the commissioner.

**(2)** The commissioner may from time to time request administrative support from the Government of Alberta through the Minister if the commissioner considers this appropriate and necessary for the proper conduct of the inquiry.

**Other matters**

**9(1)** Subject to sections 7 and 8, the Government of Alberta shall support the commissioner's work through contracted resources or by Government personnel assigned for that purpose.

**(2)** Individuals or organizations contracted or assigned pursuant to subsection (1) shall take their directions from the commissioner.