Court File Nos. 632/20 646/20
633/20 647/20
634/20 648/20
644/20 660/20
645/20

ONTARIO
SUPERIOR COURT OF JUSTICE
(Toronto Divisional Court)

BETWEEN:

DEMOCRACY WATCH

Applicant
(Moving Party)

- and -

ONTARIO INTEGRITY COMMISSIONER

Respondent
(Responding Party)

FACTUM OF THE MOVING PARTY

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PART I: OVERVIEW

1. The moving party, Democracy Watch, brings this motion to set aside the decision of Justice Favreau (the "Motion Judge"), sitting as a single judge pursuant to s. 21(3) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, dated November 10, 2021.

2. The Motion Judge allowed the motion of the Respondent Ontario Integrity Commissioner ("OIC") and quashed Democracy Watch's nine consolidated Applications for judicial review. The Applications sought judicial review of nine final decisions by the OIC, acting in his capacity as Registrar under the *Lobbyists Registration Act*, 1998, S.O. 1998, c. 27, Sched. (the "*LRA*").

3. The Respondent conceded that Democracy Watch has a genuine interest in the matters (the second prong of the test for public interest standing), and the Motion Judge ruled it was not plain and obvious that Democracy Watch's Applications do not raise justiciable issues and had not been filed within a reasonable period of time.

4. The Motion Judge refused to grant public interest standing to Democracy Watch solely because she found that the Applications did not raise serious issues and were inconsistent with the statutory scheme of the *LRA*, particularly in that they could adversely affect the privacy interests of the lobbyists who were the subjects of the impugned OIC decisions.

5. Democracy Watch respectfully submits that the Motion Judge committed errors by: applying the test for public interest standing in a narrow and technical manner, despite the Supreme Court's direction that this test must be applied flexibly and purposively; misapprehending the legal focus of the Applications; ignoring several directly relevant precedential cases; and ignoring the fact that the Applications could easily proceed, as

many other cases have, under a confidentiality order that protects personal information, such as the identity of the lobbyists involved.

6. The Motion Judge misapprehended the Applications, which focus on serious legal issues with broad implications, as follows:

    i. whether the OIC's decisions were based on reasonable interpretations of key *LRA* provisions that prohibit unethical lobbying;

    ii. whether they were reasonable exercises of discretion not to penalize lobbyists who violated the *LRA*; and

    iii. whether there was an apprehension of bias on the part of the OIC when making all of the impugned decisions.

7. In so doing, the Motion Judge ignored the fact that the Applications are essentially the only way that these serious issues can ever be brought before the courts, and Her Honour incorrectly placed undue emphasis on the interests of third parties rather than considering those interests as one of a number of factors under the public interest standing test.

8. The Motion Judge also disregarded, without explanation, Federal Court and Federal Court of Appeal decisions in which Democracy Watch has been granted public interest standing to challenge analogous decisions of federal lobbying enforcement officials.

9. The seriousness, significance, and public importance of the Motion Judge's decision must not be understated: if that decision is not set aside then the hundreds of decisions the OIC makes annually that interpret and apply key provisions of the *LRA* will never be judicially reviewable.

10. Almost all of the OIC's hundreds of decisions annually under the *LRA* are made in secret. Democracy Watch's Applications challenge the OIC's first-ever public decisions

interpreting and applying key ethical lobbying requirements and penalty provisions in the *LRA*.

11. If the courts do not judicially review these few public decisions to determine whether the OIC is misinterpreting and misapplying these key *LRA* provisions, the OIC can freely continue to enforce the *LRA* unreasonably in perpetuity—thereby permitting secret, unethical lobbying by hundreds of lobbyists, which would seriously undermine the integrity of the Government of Ontario's decision-making and policy-making for decades to come.

PART II: THE FACTS

A. The Legislative Framework

12. The OIC is appointed by the Legislative Assembly of Ontario under s. 23 of the *Members' Integrity Act*, 1994, S.O. 1994, c. 38 (the "*MIA*"). Under s. 10 of the *LRA*, the OIC is appointed as Registrar of lobbyists, which is tasked with maintaining a public registry of lobbying activities by lobbyists, conducting investigations into alleged violations of the *LRA*, and penalizing lobbyists who violate the *LRA*.

13. During or instead of an investigation, the OIC may refer the matter to another person or body to be investigated as an offence under s. 18 of the *LRA* or as a violation of another Act. Otherwise, the OIC is the sole investigator and decision-maker under the *LRA*.

14. If, after investigating, the OIC believes that a lobbyist has violated the *LRA*, s. 17.5 states that the OIC "shall" give the lobbyist notice of the alleged violation and reasons, and shall give the lobbyist an opportunity to respond. If the OIC then "finds" the lobbyist

violated the *LRA*, s. 17.6 states that the OIC "shall" give the lobbyist notice of that finding.

15. The s. 17.6 notice requires the OIC to give notice of any penalty imposed under the OIC's statutory power in s. 17.9 along with the reasons for the finding and any penalty.

16. When the OIC makes a finding of non-compliance under section 17.6, the OIC "may" impose a penalty under s. 17.9. The OIC has the power to do either or both of the following: (i) prohibit the person from lobbying for a period of not more than two years, or (ii) publish the person's name along with a description of the noncompliance.

17. Under s. 17.12, the OIC is required to produce an Annual Report that "shall include … (b) a description in summary form of **each investigation concluded** or resumed, and of each matter referred, during the year" (emphasis added).

B. The OIC's Many Secret, and Few Public, Enforcement Decisions

18. The OIC made enforcement decisions under the *LRA* in 335 situations during fiscal year 2019–20. However, the OIC concluded investigations and issued a public decision in only 29 of the 335 situations, resulting in the 24 final decisions published in the Annual Report (some of the decisions covered the activities of more than one lobbyist). No other information is provided in the Annual Report about 306 of the OIC's enforcement decisions.[1] Democracy Watch is challenging nine of the 24 reported decisions.

[1] Affidavit of Duff Conacher, Applicant's Motion Record for Production of the Respondent's Record of Proceedings (hereinafter "AMR"), Tab 3, para. 4, Exhibit A, pp. 89 and 93.

19. For ease of reference, the Applicant has created a document numbering the decisions in the Annual Report.[2] The numbers and corresponding court file numbers are as follows:

Court File Number	Decision # and page # in document created from section of the Annual Report
632/20	6 (p. 52)
633/20	7 (p. 52)
634/20	10 (p. 53)
644/20	5 (p. 51)
645/20	14 (p. 54)
646/20	17 (p. 55)
647/20	23 (p. 56)
648/20	13 (pp. 53-54)
660/20	20 (p. 55)

20. In making five of these nine decisions, the OIC interpreted and applied s. 3.4 of the *LRA* publicly for the first time. These decisions set precedents that the OIC very likely also applied to at least some of the other 306 secret *LRA* enforcement decisions, and will apply to all future OIC enforcement decisions. The OIC also set precedents in six of the nine decisions concerning how the OIC will exercise the discretion whether to impose any penalty on a lobbyist who has violated the *LRA*.

21. Decisions 6, 7 and 10 are decisions by the OIC that each found a lobbyist or lobbyists did not violate s. 3.4 of the *LRA*, which prohibits a lobbyist from knowingly placing a public office holder in a real or potential conflict of interest as defined in the *MIA.*

[2] Affidavit of Duff Conacher, AMR, Tab 2, para. 6, Exhibit B.

22. Decisions 5, 13, 14, 17, 20 and 23 are decisions by the OIC that each found a lobbyist in violation of the *LRA*. Decisions 13 and 20 concern violations of s. 3.4, while the other decisions concern violations of the *LRA* provisions that require registration and disclosure of lobbying activities. Despite conducting these investigations and finding the aforesaid violations of the *LRA*, the OIC decided not to penalize any of the lobbyists—even though they violated the *LRA* in exactly the same way or an equally serious way, and their violations were mitigated in exactly the same ways, as the one lobbyist whom the OIC penalized in Decision 1 of his 2019–20 Annual Report.[3]

C. Serious Legal Issues Raised by the Applications Have Not Been Adjudicated

23. As a result, these nine Applications raise serious issues concerning the proper interpretation, application, and enforcement of key provisions in the *LRA* in hundreds of situations annually. The *LRA* aims to prevent secret, unethical lobbying in order to maintain government integrity, including through enforcement and penalty measures designed to ensure lobbyists comply with these provisions and do not undermine the integrity of the decision-making of provincial politicians and Government of Ontario officials. These are clearly serious issues of broad public importance.

24. The reasons for the *LRA*'s disclosure and "no conflict of interest" provisions are obvious: those who seek to influence public office holders must do so in a transparent manner that avoids even potential conflicts or the appearance of conflict, which are as harmful to public confidence in elected office holders as actual conflicts. Consistent with such transparent public accountability, investigations into contraventions of the *LRA* must also

[3] Affidavit of Duff Conacher, AMR, Tab 2, para. 6, Exhibit B, Decision 1, p. 107. As noted in the Decision, the penalty was the minimal penalty of naming the lobbyist publicly with a summary of the violation.

be transparent and accountable. The public has an undeniable interest in knowing who is influencing their elected officials and whether this is being done in an ethical manner—which the *LRA* requires. The serious legal issues of whether the OIC's decisions are ensuring this by properly interpreting and applying the *LRA*'s provisions have not yet been adjudicated by the courts.

25. Despite the evident seriousness and broad public importance of these issues, the Motion Judge found that each of the Applications was a narrow challenge to a single enforcement decision that fails to "raise issues of broader implication about the proper interpretation of provisions of the *LRA*."[4]

26. The Motion Judge then found that the Applications were not a reasonable or effective way to bring the matter before the courts, primarily because judicial review was said to conflict with interests of the lobbyists who were the subjects of the impugned decisions.[5] The Motion Judge did not weigh these interests against the interests in permitting judicial review, which the federal courts have permitted in several similar cases, and did not acknowledge that a confidentiality order could easily protect the lobbyists' interests.

27. On these bases, the Motion Judge refused to grant Democracy Watch public interest standing and quashed its nine Applications. Importantly, it was conceded that Democracy Watch has a genuine interest in the matters, and the Motion Judge found the questions of justiciability and delay could not be plainly and obviously decided on the motion and would have permitted the Applications to go before a full panel of the Divisional Court

[4] Decision of the Motion Judge, at para 35.

[5] Decision of the Motion Judge, at paras 40–42.

(had Her Honour not refused to grant Democracy Watch public interest standing on other bases).[6]

PART III: ISSUES & THE LAW

28. The following issues are raised in this motion to set aside:

    i. What is the applicable standard of review for setting aside the Motion Judge's decision?

    ii. Did the Motion Judge err in finding it was plain and obvious that the Applications did not raise a serious issue (the first prong of the test for public interest standing)?

    iii. Did the Motion Judge err in finding it was plain and obvious that the Applications were not a reasonable or effective way to bring these issue before the courts (the third prong of the test for public interest standing)?

(i) Applicable standard of review

29. On a motion to set aside a single judge's motion decision, a three-judge panel of the Divisional Court "should not interfere with the decision of the motion judge unless there is an error of law or a palpable and overriding error in fact finding."[7]

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[6] Decision of the Motion Judge, at paras 47–52.

[7] *O'Brien v. Blue Heron*, 2018 ONSC 5501, at para 4.

30. While the question of whether to grant public interest standing is discretionary, a decision in this respect is not entitled to deference where the motion judge makes an "error in principle".[8]

31. On a motion to quash a judicial review application, the Divisional Court must determine whether it is "plain and obvious" that the application cannot succeed.[9] An application for judicial review should only be quashed for lack of standing in "very clear cases".[10]

(ii) <u>The Motion Judge erred in finding it was plain and obvious that the Applications did not raise a serious justiciable issue</u>

32. In the decision, the Motion Judge found that the Applications "do not raise a serious issue."[11] Given Her Honour's finding that the question of justiciability could not be plainly and obviously decided on the motion, this Honourable Court only needs to determine whether the motion judge erred in finding there was no serious issue raised in the context of the first prong of the public interest standing test. Democracy Watch respectfully submits that Her Honour did so err.

33. Once it is determined that the Applications raise "at least one serious issue", it is not necessary to parse the pleadings further under the public interest standing test.[12] A "serious issue" is an "important one" that is "far from frivolous".[13]

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[8] *Alford v. Canada (Attorney General)*, 2019 ONCA 657, at para 3.

[9] *Adams v. Canada*, 2011 ONSC 325, at para 19.

[10] *Sierra Club of Canada v. Canada (Minister of Finance)*, 1998 CanLII 9124 (FC), as cited in *Mathur v. Ontario*, 2020 ONSC 6918, at para 240.

[11] Para 38.

[12] *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, at para 42. ["*Downtown Eastside*"].

[13] Ibid.

34. Democracy Watch's Applications raise three such issues—namely: (i) the reasonableness of the OIC's interpretation of the key conflict-of-interest provisions in the *LRA*; (ii) the reasonableness of the OIC's exercise of discretion in not penalizing lobbyists who have violated the *LRA*; and (iii) whether the OIC's decisions are tainted by institutional bias.

35. As the Supreme Court of Canada has stated, maintaining government integrity is an "important goal" that is "crucial to the proper functioning of a democratic system."[14] Democracy Watch's nine Applications, whether taken separately or together, all deal squarely with this important goal.

36. Applications 632/20; 633/20; and 634/20 challenge the first three public decisions issued by the OIC that interpret and apply s. 3.4 of the *LRA*. All three of these Notices of Application—particularly sub-parts 2.A(f)–(g) concerning the legislative context, sub-parts 2.B(c)–(d) concerning the OIC's decision, and sub-parts 2.C(a)–(k) concerning Democracy Watch's legal position—make it abundantly clear that Democracy Watch raises the very serious legal issue of the OIC's interpretation and application of s. 3.4 of the *LRA*. Paragraph 22 of the Motion Judge's decision acknowledges this fact.

37. Sub-part 2.A(g) of the Notice of Application in 632/20 clearly states that the OIC's decision at issue "was an incorrect and unreasonable interpretation and application of section 3.4 of the *LRA* to the lobbyist's actions." Sub-parts 2.A(e)–(g) together make clear that application 632/20 specifically challenges the part of the OIC's interpretation of s. 3.4 concerning what campaigning activities by a lobbyist create a real or potential

[14] *R v. Hinchey*, 1996 CanLII 157 (SCC), at paras. 13 and 15.

conflict of interest as defined in ss. 2–4 of the *MIA*. This is clearly a serious question of law with broad implications.

38. Sub-part 2.A(g) of the Notice of Application in 633/20 also clearly states that the OIC's decision at issue "was an incorrect and unreasonable interpretation and application of section 3.4 of the *LRA* to the lobbyist's actions." Sub-parts 2.A(e)–(g) together make clear that application 633/20 specifically challenges the part of the OIC's interpretation of s. 3.4 concerning what period of time would have to pass before the campaigning that the lobbyist did for the politicians would no longer create a real or potential conflict of interest as defined in ss. 2–4 of the *MIA*. This is clearly another serious legal issue with broad implications.

39. Sub-part 2.A(g) of the Notice of Application in 634/20 again states that the OIC's decision at issue "was an incorrect and unreasonable interpretation and application of section 3.4 of the *LRA* to the lobbyist's actions." Sub-parts 2.A(e)–(g) make clear that application 634/20 specifically challenges the part of the OIC's interpretation of s. 3.4 concerning what fundraising activities by a lobbyist for a politician create a real or potential conflict of interest as defined in ss. 2–4 of the *MIA*. This is an additional serious question of law with broad implications.

40. Applications 644/20, 645/20, 645/20, 646/20, 647/20, 648/20 and 660/20 all challenge decisions by the OIC not to penalize lobbyists who violated the *LRA*. In all six of the Notices of Application, sub-parts 2.C(a)–(g) make it abundantly clear that the Applications concern the very serious legal issue of the OIC arbitrarily and inconsistently exercising the discretion whether or not to penalize lobbyists who violate the *LRA*. This is based on the fact that the OIC decided not to penalize these six lobbyists in 2019–20 even

though they violated the *LRA* in the same or equally serious manner, with the same mitigating circumstances, as did the one lobbyist whom the OIC decided to penalize in 2019–20, and the three lobbyists the OIC penalized in decisions issued in 2018–19. These six Applications are the first time this serious legal issue has been adjudicated before the courts.

41. In all nine of the Notices of Application, sub-parts 2.C(l)–(o) explicitly raise Democracy Watch's serious allegation that there was a reasonable apprehension of bias on the part of the OIC when the OIC made the nine impugned decisions at issue. Paragraph 24 of the Motion Judge's decision acknowledges this fact.

42. In sum, these Applications all raise and focus on a number of very serious issues—namely, whether the OIC is reasonably interpreting and applying s. 3.4 of the *LRA*, which is the sole provision in the *LRA* that requires ethical lobbying; whether the OIC is reasonably exercising its discretion concerning whether or not to penalize a lobbyist who has violated the *LRA*; and whether there was a reasonable apprehension of bias on the part of the OIC when making the nine impugned decisions.

43. Despite these clear articulations in all nine of the Notices of Application of serious legal issues with broad implications concerning the proper interpretation and application of key provisions of the *LRA*, the Motion Judge misapprehended the purport of Democracy Watch's Applications. This constitutes a palpable and overriding error in fact finding that is not entitled to deference.

44. The Motion Judge incorrectly stated that Democracy Watch's Applications focused only "on the outcome in each of the nine matters at issue," and that they speculate "the

Commissioner is being too lenient in applying the *LRA*".[15] As a result, the Motion Judge held that the Applications fail to "raise issues of broader implication about the proper interpretation of provisions the *LRA*".[16] With respect, this is simply not the case.

45. Three of the nine applications challenge the first three public rulings in which the OIC interpreted s. 3.4 of the *LRA*—the rule prohibits lobbyists from undertaking activities that place provincial politicians and Government of Ontario officials in a conflict of interest.

46. Determining whether the OIC is reasonably interpreting that key provision unquestionably has broader implications beyond the specific situation in which that interpretation occurred. The OIC's interpretation of s. 3.4 in any given situation is a very serious legal issue with implications for the integrity of decision-making and policy-making by all Ontario politicians and government officials.

47. In finding otherwise, the Motion Judge also misapprehended and narrowly summarized the decision in *Democracy Watch v. Canada (Attorney General)*, 2021 FC 613—stating only that this decision allowed Democracy Watch to proceed with judicial review of final decisions by the Commissioner of Lobbying on the basis of the issue of whether parliamentary secretaries are "staff" as defined in the federal *Lobbyists' Code of Conduct*.[17]

[15] Decision of the Motion Judge, at para 37.

[16] Decision of the Motion Judge, at para 35.

[17] Decision of the Motion Judge, at para 36.

48. The Federal Court's decision is not so narrow, as it also allowed Democracy Watch to challenge the Commissioner's interpretation and application of Rule 6 in the *Code of Conduct*,[18] a rule which is analogous to s. 3.4 of the *LRA*.[19]

49. As a result, the Federal Court's decision in 2021 FC 613 granted public interest standing to Democracy Watch to pursue judicial reviews of the Commissioner's decisions on the basis of exactly the same serious legal issue as three of Democracy Watch's nine applications for judicial review in this matter.

50. The Motion Judge further mischaracterized Democracy Watch's Applications when her Honour found that, "[w]ith very little information, the applicant speculates that the Commissioner is not properly exercising his discretion when investigating and disposing of complaints."[20]

51. While it is true (and unfortunate) that the OIC's one- or two-paragraph public decisions are vague and provide limited information, Democracy Watch does not speculate that the OIC is unreasonably interpreting and applying key provisions of the *LRA* or not properly exercising the discretion to enforce the *LRA*. Instead, as detailed above, each of the Notices of Application set out clearly and specifically how the OIC is unreasonably interpreting, applying, and enforcing the *LRA*.

52. The Motion Judge's misapprehension of the issues raised by Democracy Watch is a palpable and overriding error that, in turn, led her Honour to commit an error in principle

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[18] *Democracy Watch v. Canada (Attorney General)*, 2021 FC 613, paras. 21, 37-39, 46, 58 and 71-74.

[19] The Federal Court also confirmed (in a December 14, 2021 ruling on another motion) that Democracy Watch's judicial review also involves the Court reviewing whether the federal Commissioner is interpreting and applying Rule 6 in the *Code of Conduct*: *Democracy Watch v. Canada (Attorney General)*, 2021 FC 1417.

[20] Decision of the Motion Judge, at para 38.

by applying the first prong of the public interest standing test in a narrow and technical manner.

53. The fact is that the only public instances of the OIC interpreting key provisions of the *LRA* occur through the summary of findings in the Annual Report. Democracy Watch has challenged nine such findings not because it hoped to turn disparate decisions into a single matter of public importance, but because each decision, taken on its own, raises matters of public importance. Whether there was one such decision or nine of them, Democracy Watch's approach would be the same.

54. Each and every one of the Applications raises the OIC's interpretation of legislative provisions that go to the heart of ethical lobbying and government transparency. These are serious issues, and it was an error for the Motion Judge to conclude otherwise.

55. The Motion Judge also did not consider whether the issue of institutional bias raised in each of the Applications was a serious issue. Her Honour simply did not address this issue when determining the first branch of the public interest standing test, and there is no explanation for this omission, even though the test for public interest standing only requires there to be one serious issue under the first prong of the test.[21] This omission constitutes an additional error of law.

56. These errors, taken separately and together, provide ample reason for this panel to set aside the Motion Judge's decision.

[21] *Downtown Eastside*, *supra* note 12, at para 42.

(iii) The Motion Judge erred in finding it was plain and obvious that the Applications were not a reasonable or effective way to bring these issue before the courts

57. The Supreme Court has noted that the flexible and purposive approach to public interest standing is especially important on the third prong of the test, i.e. whether the proceeding is a reasonable or effective way to bring the matter before the courts:

> [T]he three elements … are interrelated factors that must be weighed in exercising judicial discretion to grant or deny standing. These factors, and **especially the third one**, should not be treated as hard and fast requirements or free-standing, independently operating tests. Rather, they should be assessed and weighed cumulatively, in light of the underlying purposes of limiting standing and applied in a flexible and generous manner that best serves those underlying purposes.[22] [Emphasis added.]

58. Ultimately, the "whole point" of public interest standing "is for the court to use its discretion, where appropriate, to allow more plaintiffs through the door", and using public interest standing "simply to bar access" is antithetical to that purpose.[23]

59. Yet, with respect, using public interest to bar access is exactly what the Motion Judge did in this case. That is particularly evident under the third prong of the test, which ought to be especially flexible but was applied by the Motion Judge as an inflexible bar.

60. Contrary to the Motion Judge's decision, Democracy Watch submits that these Applications are not only a reasonable and effective way to bring these important issues before the courts, but are *the only way* to bring these issues before the courts.

61. In the nine impugned decisions, the OIC found all the lobbyists involved were either not in violation of the *LRA* or should not be penalized after finding they violated the *LRA*. It is self-evident that a lobbyist who is found not guilty or who is not penalized will have no

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[22] Ibid, at para 20.

[23] *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2, at para 18.

incentive to challenge the OIC's decision; in fact, none of the lobbyists involved challenged the OIC's decisions.

62. This is a situation where "there is no hint that any other such person is even interested in raising this issue for consideration by the courts" which weighs heavily in favour of granting public interest standing under the third prong of the test—especially since the Applications raise very important issues of statutory interpretation and government integrity and transparency that have not been, and will not otherwise be, adjudicated.[24]

63. At a minimum, the Motion Judge was required to weigh this factor against the interests of the individual lobbyists who would potentially be affected if these matters proceed to be judicially reviewed. However, Her Honour failed to do so and instead collapsed the third prong of the test into a narrow focus that gave undue weight to the privacy interests of these lobbyists—without proper regard to whether steps could be taken to protect these interests while allowing the Applications to proceed.[25]

64. This was an error in principle, in that it disregards the fact that third-party interests are but one factor to be considered at this stage of the test.[26] The Motion Judge's focus on the interests of the lobbyists led Her Honour to overlook the key considerations of the third prong of the test, articulated by the Supreme Court as being

> whether the proposed action is an economical use of judicial resources, whether the issues are presented in a context suitable for judicial determination in an adversarial setting and whether permitting the proposed

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[24] *Western Canada Wilderness Committee v. British Columbia (Oil and Gas Commission)*, 2014 BCSC 1919, at paras 70–72.

[25] Decision of the Motion Judge, at paras 39-44.

[26] *Downtown Eastside*, *supra* note 12, at paras 50–51.

> action to go forward will serve the purpose of upholding the principle of legality.[27]

65. The Motion Judge further erred on this point by failing to consider Federal Court and Federal Court of Appeal rulings that all allowed Democracy Watch to pursue judicial review of several decisions by the federal Registrar of Lobbyists (one of the roles at the time of the federal Ethics Counsellor) and Commissioner of Lobbying—final decisions that are highly analogous to the nine impugned decisions of the OIC. Given the Applications in this proceeding raise serious issues with broad implications concerning lawful action by government actors, this failure even to consider analogous proceedings from other courts is inexplicable.

66. In almost all of these federal cases, several years had passed since the Registrar or Commissioner had rendered their decisions, and so were highly relevant for the Motion Judge to consider when addressing the lobbyists' interests in not having matters re-opened after the passage of several months or even years:

    a. *Democracy Watch v. Canada (Attorney General)*, 2004 FC 969;
    b. *Democracy Watch v. Campbell*, 2008 FC 214; and
    c. *Democracy Watch v. Campbell*, 2009 FCA 79.[28]

67. The Motion Judge further erred in concluding that judicial review by Democracy Watch conflicted with the statutory scheme of the *LRA*. In so concluding, Her Honour misapprehended that scheme, particularly s. 17.8.

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[27] Ibid, at para 50.

[28] Democracy Watch notes that its counsel referred the Motion Judge to the third ruling cited above during the hearing of the OIC's motion to quash, and that ruling summarizes and cites the other two rulings cited above.

68. The Motion Judge found that that provision "suggests that only lobbyists are to have standing to challenge a decision of the [OIC] under the [*LRA*]."[29] Yet the availability of judicial review is established in the *Judicial Review Procedure Act* ("*JRPA*").[30] If the legislature intended to prohibit others from pursuing judicial review of the OIC's decisions under the *LRA*, it would have set out that prohibition in the *LRA*, but it has not done so, as s. 17.8 only states the time period following an OIC decision in which a lobbyist may seek judicial review.

69. The Motion Judge incorrectly treated the timelines set out in s. 17.8 as leading inexorably to the conclusion that only lobbyists affected by an OIC ruling may seek to have it judicially reviewed, and that Democracy Watch was attempting to circumvent this statutory scheme.

70. In support of this conclusion, the Motion Judge cited this Court's decision in *Democracy Watch v. Ontario Integrity Commissioner*, 2020 ONSC 6081. Democracy Watch submits that this was an error, as this decision addressed an entirely different statutory scheme, the *Public Service of Ontario Act* ("*PSOA*"),[31] that establishes and regulates an employer-employee relationship between the OIC and Ontario government officials. Lobbyists under the *LRA* are not employees of the OIC, nor of the Government of Ontario, and so this decision has no useful application to the *LRA*'s scheme.

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[29] Decision of the Motion Judge, at para 43.

[30] *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1.

[31] *Public Service of Ontario Act*, 2006, S.O. 2006, c. 35, Sched. A.

71. The Motion Judge further misapprehended the utility of that decision by stating the Court "held that it would undermine a similar statutory scheme in that case to allow members of the public to challenge a decision where a statutory provision states that only the subject of an inquiry could bring an application for judicial review."[32] In fact, the *PSOA* does not contain any provision concerning the rights of anyone to bring an application for judicial review in any court.

72. This resulted in the Motion Judge's incorrect conclusion that "[a]llowing these applications for judicial review to go forward would inevitably conflict with" the confidentiality protections in the *LRA*, and the provision that "provides that the lobbyists under investigation are not to be identified unless the Commissioner finds misconduct and determines that public identification is warranted".[33] This is because, the Motion Judge reasoned, Democracy Watch "seeks the full records upon which the Commissioner based his decisions."[34]

73. This conclusion is a further misapprehension of Democracy Watch's position and another failure to properly apply the flexible approach to public interest standing—in this instance, by completely failing to consider whether the interests of lobbyist could be protected while granting Democracy Watch standing to pursue these Applications.

74. As Democracy Watch noted in its reply factum on the OIC's motion to quash, it is not seeking disclosure of the identity of any of the lobbyists involved as part of the judicial review process—because the focus of the Applications is not on these individuals but

[32] Decision of the Motion Judge, at para 43.

[33] Decision of the Motion Judge, at para 42.

[34] Ibid.

rather on the serious legal issue concerning whether the OIC is properly interpreting, applying, and enforcing key provisions in the *LRA*.

75. As Democracy Watch also stated in its reply factum, if a lobbyist applied for judicial review of a decision of the OIC finding the lobbyist in violation of the *LRA* but not naming the lobbyist, the judicial review would necessarily proceed without naming the lobbyist. There is no reason provided by the Motion Judge as to why the same process could not be followed in Democracy Watch's Applications.

76. It is entirely possible to conduct judicial reviews without disclosing the identity of any of the lobbyists, as the OIC's record of proceeding for each decision can be disclosed with redactions of private personal and/or identifying information. This Honourable Court has complete power to make orders to this effect so as to protect confidentiality.

77. Democracy Watch notes that the Federal Court recently made such a confidentiality order for judicial review applications in which Democracy Watch was granted public interest standing to challenge the federal Commissioner of Lobbying's interpretation and application of Rules 6 and 9 of the federal *Lobbyists' Code of Conduct* in two separate decisions (which are, again, analogous applications to Democracy Watch's nine Applications at issue in this proceeding).[35]

78. The proper flexible and purposive approach to public interest standing required the Motion Judge to consider this possibility, and to weigh the interests of the lobbyists against the fact that lobbyists directly affected by the OIC's findings never have—and almost certainly never will—file judicial review applications raising these issues.

[35] *Democracy Watch v. Canada (Attorney General)*, 2021 FC 1417.

79. The Motion Judge's failure to do so is an error in principle, in that Her Honour improperly applied the test for public interest standing as a bar to access rather than in accordance with its purpose of allowing more litigants through the door.

80. The Motion Judge's elevation of the interests of third parties above all other factors to be properly considered under the third prong of the test is also an error in principle, in that it turned this into a standalone determinative factor despite the Supreme Court's clear direction to weigh all three prongs of the test in an interrelated and cumulative manner.

81. These errors, taken separately and together, provide compelling reason for this panel to set aside the Motion Judge's decision.

(iv) Conclusion

82. In denying Democracy Watch's judicial review application at the standing stage, the Divisional Court has created a structure whereby the OIC is not subject to judicial oversight and cannot be held accountable for the exercise of, or failure to exercise, his statutory mandate under the *LRA*. The proper fulfilment and oversight of the OIC's role and decisions, and the public's ability to see that oversight and accountability, is of significant public importance.

83. No court has previously interpreted the nature and scope of the OIC's powers pursuant to the *LRA* that are at issue in this proceeding. There is no meaningful precedent on which the Divisional Court's conclusions are based. It is of public importance that these issues be determined correctly, and with proper consideration.

84. Further, the issues raised in these Applications transcend the interests of the particular parties. Democracy Watch is an independent, not-for-profit, advocacy organization with

no personal or pecuniary interest in the matters at issue. It raises these issues in the broader public interest, for the benefit of the public that has an interest in holding lobbyists accountable in their relationships and interactions with public officials.

82. The Motion Judge erred by disregarding that three of these Applications clearly focus on whether the OIC is interpreting s. 3.4 of the *LRA* reasonably; that the other six Applications clearly focus on whether the OIC is properly exercising the discretion of whether or not to penalize a lobbyist who has violated the *LRA*; and that all nine Applications raise the issue of whether there was a reasonable apprehension of bias on the part of the OIC when making the impugned decisions.

83. Democracy Watch's Applications are not an attempt to circumvent the *LRA*'s scheme. If the legislature intended to prohibit others from pursuing judicial review of the OIC's decisions under the *LRA*, it would have set out that prohibition in the *LRA*, but it did not do so. It was an error for the Motion Judge to effectively read in such a restriction, thereby using public interest standing to simply bar—rather than enhance—access.

84. While Democracy Watch acknowledges that there may be some impact on the individual lobbyists, it submits that a confidentiality order will address that impact and safeguard the lobbyists' privacy. It was an error for the Motion Judge to elevate those interests above all others raised in the Application rather than perform the required weighing of those interests against the factors that favoured granting public interest standing.

85. Any reasonable review, applying the test in the required purposive, flexible and generous manner,[36] would conclude that the Applicant clearly meets all of the requirements for

[36] *Downtown Eastside*, *supra* note 12, at paras 33 and 37.

public interest standing. These Applications raise justiciable issues; the issues are serious and have broad implications concerning government integrity (which the Supreme Court of Canada has ruled is fundamental to our democratic system) and the proper interpretation, application and enforcement of key provisions of the *LRA*; the issues have not been adjudicated by the courts; the Applicant has a genuine interest in the matter (as conceded by the OIC); and these Applications are a reasonable and effective way—in fact, they are the only realistic way—to bring these important issues before the courts.

86. For all of these reasons, Democracy Watch respectfully requests the reviewing panel to set aside the Motion Judge's decision.

87. As a final point, Democracy Watch wishes to briefly address the "floodgates" argument raised by the OIC before the Motion Judge (who correctly did not take this into account in the decision). Allowing these public interest Applications to proceed and challenge a handful of the very few public final enforcement decisions made by the OIC in 2019–20 will not open the door to multiple cases in the future.

88. Once the Courts determine in this proceeding whether the OIC is properly interpreting and applying s. 3.4 of the *LRA* and properly exercising the discretion to penalize lobbyists who violate the *LRA*, presumably the OIC will comply with those court rulings in making all future decisions. Therefore, neither Democracy Watch nor anyone else would have a good reason to apply for further judicial reviews in these types of OIC decisions.

89. Democracy Watch acknowledges that it filed other judicial review applications of decisions under the *LRA* that the OIC issued in his 2020–21 Annual Report. However, this was done to meet the *JRPA*'s new filing deadline and protect Democracy Watch's interests in these matters. The OIC's 2020–21 decisions raise the same issues that the

Courts have not yet heard or adjudicated concerning the interpretation and application of s. 3.4 of the *LRA* and the proper exercise of discretion in penalizing lobbyists who violate the *LRA*. Again, after the courts rule on these two serious legal issues, presumably the OIC will comply with the court rulings, and there will be no valid cause for any future judicial review applications.

PART IV: ORDER SOUGHT

85. Democracy Watch respectfully requests the following:

i. An order setting aside the decision of the Motion Judge dated November 10, 2021; and

ii. An order that no costs be awarded to either party in respect of this motion, as this matter is precisely the type of novel public interest litigation for which a "no costs" order is appropriate.[37]

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 14th DAY OF JANUARY, 2022

Nick Papageorge / Ashley Wilson / Wade Poziomka
ROSS & McBRIDE LLP

Lawyers for the Applicant

[37] *Magder v. Ford*, 2013 ONSC 1842.

CERTIFICATE OF COUNSEL

I, Nick Papageorge, lawyer for the Applicant herein, certify that I estimated that 1 hour will be required for the oral argument of the Applicant on its motion for production (not including reply).

_____

Nick Papageorge

Date: January 14th, 2022

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SCHEDULE "A"
LIST OF AUTHORITIES

1. *O'Brien v. Blue Heron*, 2018 ONSC 5501
2. *Alford v. Canada (Attorney General)*, 2019 ONCA 657
3. *Mathur v. Ontario*, 2020 ONSC 6918
4. *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45
5. *R v. Hinchey*, 1996 CanLII 157 (SCC)
6. *Democracy Watch v. Canada (Attorney General)*, 2021 FC 613
7. *Democracy Watch v. Canada (Attorney General)*, 2021 FC 1417
8. *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2
9. *Western Canada Wilderness Committee v. British Columbia (Oil and Gas Commission)*, 2014 BCSC 1919
10. *Democracy Watch v. Canada (Attorney General)*, 2004 FC 969;
11. *Democracy Watch v. Campbell*, 2008 FC 214
12. *Democracy Watch v. Campbell*, 2009 FCA 79
13. *Magder v. Ford*, 2013 ONSC 1842

SCHEDULE "B"
TEXT OF RELEVANT STATUTES AND REGULATORY AUTHORITIES

***Members' Integrity Act, 1994,* S.O. 1994, c. 38, s. 23 and s. 23.1**

Commissioner

23 (1) There shall be an Integrity Commissioner who is an officer of the Assembly. 2018, c. 17, Sched. 24, s. 2.

Appointment

(2) The Assembly shall, by order, appoint the Commissioner. 2018, c. 17, Sched. 24, s. 2.

Selection by panel

(3) Unless decided otherwise by unanimous consent of the Assembly, an order shall be made under subsection (2) only if the person to be appointed has been selected by unanimous agreement of a panel composed of one member of the Assembly from each recognized party, chaired by the Speaker who is a non-voting member. 2018, c. 17, Sched. 24, s. 2.

Term of office

23.1 (1) The Commissioner shall hold office for a term of five years and may be reappointed for one further term of five years. 2018, c. 17, Sched. 24, s. 2.

Selection by panel

(2) Subsection 23 (3) applies with respect to a reappointment under subsection (1) of this section. 2018, c. 17, Sched. 24, s. 2.

Continuation in office

(3) By order of the Assembly, the Commissioner may continue to hold office after expiry of his or her term of office until a temporary Commissioner is appointed under section 23.5 or until a successor is appointed. 2018, c. 17, Sched. 24, s. 2.

Transition

(4) The Commissioner in office immediately before the day the *Restoring Trust, Transparency and Accountability Act, 2018* receives Royal Assent is deemed to be in the first term of his or her appointment and shall continue to hold office for the remainder of the term. 2018, c. 17, Sched. 24, s. 2.

***Lobbyists Registration Act, 1998*, S.O. 1998, c. 27, Sched.**

s. 3.4, 4(1), 10, 17.1–17.6, 17.7–17.10, and 17.12

Lobbyists placing public office holders in conflict of interest

Consultant lobbyists

3.4 (1) No consultant lobbyist shall, in the course of lobbying a public office holder, knowingly place the public office holder in a position of real or potential conflict of interest as described in subsections (3) and (4). 2014, c. 13, Sched. 8, s. 5.

In-house lobbyists

(2) No in-house lobbyist (within the meaning of subsection 5 (7) or 6 (5)) shall, in the course of lobbying a public office holder, knowingly place the public office holder in a position of real or potential conflict of interest as described in subsections (3) and (4). 2014, c. 13, Sched. 8, s. 5.

Definition — conflict of interest, member of the Assembly

(3) A public office holder who is a member of the Legislative Assembly is in a position of conflict of interest if he or she engages in an activity that is prohibited by section 2, 3 or 4 or subsection 6 (1) of the *Members' Integrity Act, 1994*. 2014, c. 13, Sched. 8, s. 5.

Definition — conflict of interest, other persons

(4) A public office holder who is not a member of the Legislative Assembly is in a position of conflict of interest if he or she engages in an activity that would be prohibited by section 2, 3 or 4 or subsection 6 (1) of the *Members' Integrity Act, 1994* if he or she were a member of the Legislative Assembly. 2014, c. 13, Sched. 8, s. 5.

Duty to file return, consultant lobbyists

4 (1) A consultant lobbyist shall file a return with the registrar not later than 10 days after commencing performance of an undertaking. 1998, c. 27, Sched., s. 4 (1).

Registrar

10 The Integrity Commissioner is hereby appointed as registrar. 1998, c. 27, Sched., s. 10.

Investigation by registrar

17.1 (1) The registrar may conduct an investigation to determine if any person or persons have not complied with any provision of this Act or of the regulations. 2014, c. 13, Sched. 8, s. 13.

Time limit

(2) The registrar shall not commence an investigation into an alleged non-compliance with this Act or the regulations more than two years after the date when the registrar knew or should have known about the alleged non-compliance. 2014, c. 13, Sched. 8, s. 13.

Refusal or cease to investigate

(3) The registrar may refuse to conduct an investigation into any alleged non-compliance with this Act or the regulations or may cease such an investigation for any reason, including if the registrar believes that any of the following circumstances apply:

1. The matter could more appropriately be dealt with under another Act.
2. The matter is minor or trivial.
3. Dealing with the matter would serve no useful purpose because of the length of time that has elapsed since the matter arose. 2014, c. 13, Sched. 8, s. 13.

Referral instead of investigation

17.2 The registrar may, instead of commencing an investigation, or at any time during the course of an investigation, refer the matter to another person or body so that it may be dealt with as a matter of law enforcement or in accordance with a procedure established under another Act if the registrar is of the opinion that this would be more appropriate than conducting or continuing the investigation. 2014, c. 13, Sched. 8, s. 13.

Suspension of investigation in case of criminal investigation or charge laid

17.3 (1) The registrar may suspend an investigation if he or she discovers that,

(a) the subject matter of the investigation is also the subject matter of an investigation to determine whether an offence has been committed under this or any other Act of Ontario or of Canada; or

(b) a charge has been laid with respect to the alleged non-compliance. 2014, c. 13, Sched. 8, s. 13.

Resumption of suspended investigation

(2) The registrar may resume a suspended investigation at any time, whether or not the other investigation or charge described in clause (1) (a) or (b) has been finally disposed of, but before resuming a suspended investigation the registrar shall consider the following:

1. Whether the registrar's investigation may be concluded in a timely manner.
2. Whether the other investigation or charge will adequately deal with or has adequately dealt with the substance of the alleged non-compliance for the purposes of this Act. 2014, c. 13, Sched. 8, s. 13.

Registrar's powers on investigation

17.4 (1) In conducting an investigation, the registrar may,

(a) require any person to provide any information that he or she may have if, in the opinion of the registrar, the information is relevant to the investigation;

(b) require any person to produce any document or thing that may be in his or her possession or under his or her control if, in the opinion of the registrar, the document or thing is relevant to the investigation;

(c) specify a date that is reasonable in the circumstances by which the information, document or thing must be provided or produced. 2014, c. 13, Sched. 8, s. 13.

Same

(2) The registrar may summon any person who, in the registrar's opinion, is able to provide information that is relevant to the investigation, and may require him or her to attend in person or by electronic means and may examine him or her on oath or affirmation. 2014, c. 13, Sched. 8, s. 13.

Protection under *Canada Evidence Act*

(3) A person shall be informed by the registrar of his or her right to object to answer any question under section 5 of the *Canada Evidence Act*. 2014, c. 13, Sched. 8, s. 13.

Court order

(4) The registrar may apply to the Superior Court of Justice for an order directing a person to provide information, documents or things as required under subsection (1) or to attend and be examined pursuant to a summons issued under subsection (2). 2014, c. 13, Sched. 8, s. 13.

Privileges and right to counsel

(5) A person required to provide information or to produce a document or thing under subsection (1) and a person examined under subsection (2) may be represented by counsel and may claim any privilege to which the person is entitled in any court. 2014, c. 13, Sched. 8, s. 13.

Notice after investigation

17.5 (1) If, after conducting an investigation, the registrar believes that a person has not complied with a provision of this Act or of the regulations, the registrar shall,

(a) give a notice to the person setting out,

(i) the alleged non-compliance,

(ii) the reasons why the registrar believes there has been non-compliance, and

(iii) the fact that the person may exercise an opportunity to be heard under clause (b) and the steps by which the person may exercise that opportunity;

(b) give the person a reasonable opportunity to be heard respecting the alleged non-compliance and any penalty that could be imposed by the registrar under this Act. 2014, c. 13, Sched. 8, s. 13.

Same

(2) The notice must be in writing and delivered to the person personally, by email to the address provided by the person or by registered mail. 2014, c. 13, Sched. 8, s. 13.

Same

(3) Except as provided in this section, the registrar need not hold a hearing and no person or body has a right to be heard by the registrar. 2014, c. 13, Sched. 8, s. 13.

Registrar's finding of non-compliance

17.6 (1) If, after conducting an investigation and after giving a person that the registrar believed to have not complied with this Act or the regulations an opportunity to be heard, the registrar finds that the person has not complied with a provision of this Act or of the regulations, the registrar shall give a notice to the person setting out,

(a) the finding of non-compliance;

(b) any penalty imposed under section 17.9; and

(c) the reasons for the finding and for the imposition of any penalty. 2014, c. 13, Sched. 8, s. 13.

Notice

(2) The notice must also advise the person that he or she may ask for reconsideration and judicial review of the registrar's finding or of the penalty imposed, or both. 2014, c. 13, Sched. 8, s. 13.

Same

(3) The notice must be in writing and delivered to the person personally, by email to the address provided by the person or by registered mail. 2014, c. 13, Sched. 8, s. 13.

Judicial review

17.8 Within 60 days after receiving the notice of the registrar's finding under subsection 17.6 (1) or of the registrar's decision under subsection 17.7 (3), the person against whom the finding is made may make an application for judicial review of the registrar's finding or the penalty imposed, or both. 2014, c. 13, Sched. 8, s. 13.

Penalties

Registrar's powers after finding of non-compliance

17.9 (1) If the registrar's finding under section 17.6 is that a person has not complied with a provision of this Act or of the regulations, the registrar may, taking into account the gravity of the non-compliance, the number of previous incidents of non-compliance committed by the same person and the number of previous convictions against the same person for offences under this Act, and if the registrar is of the opinion that it is in the public interest to do so, do either or both of the following:

1. Prohibit the person against whom the finding is made from lobbying for a period of not more than two years.
2. Subject to subsection (4), make public the following information:
    i. The name of the person against whom the finding is made.

ii. A description of the non-compliance.

iii. Any other information that the registrar considers necessary to explain the finding of non-compliance. 2014, c. 13, Sched. 8, s. 13.

Registrar's powers after conviction

(2) If a person is convicted of an offence under this Act, the registrar may, taking into account the gravity of the offence, the number of previous convictions against the same person for offences under this Act and the number of previous incidents of non-compliance committed by the same person, and if the registrar is of the opinion that it is in the public interest to do so, do either or both of the things listed in subsection (1), with necessary modifications. 2014, c. 13, Sched. 8, s. 13.

Publication in registry

(3) If the registrar makes information public under subsection (1) or (2) as described in paragraph 2 of subsection (1), he or she shall also include the information described in subparagraphs 2 i and ii of subsection (1) in the registry established and maintained under section 11. 2014, c. 13, Sched. 8, s. 13.

Limitation

(4) The registrar shall not make any information public under subsection (1) until the time for making an application for judicial review under section 17.8 has expired and no application has been made. 2014, c. 13, Sched. 8, s. 13.

Delaying implementation of penalty

(5) A person who requests reconsideration under section 17.7, or makes an application for judicial review under section 17.8, of the registrar's finding against the person or the penalty imposed, or both, may at the same time apply in writing to the registrar to delay the implementation of the penalty, or any part of the penalty, until the matter has been finally disposed of, and upon receipt of such an application, the registrar may delay implementing the penalty until the matter has been finally disposed of if he or she is of the opinion that the delay would be just in the circumstances. 2014, c. 13, Sched. 8, s. 13.

Confidentiality

17.10 (1) Except as provided under this section, the registrar and anyone acting for or under the direction of the registrar shall not disclose to any person,

(a) whether the registrar is conducting an investigation under this Act; or

(b) any information, document or thing obtained in the course of conducting an investigation under this Act. 2014, c. 13, Sched. 8, s. 13.

Exceptions

(2) The registrar and any person acting for or under the registrar's direction shall not disclose to any person any information, document or thing obtained in the course of conducting an investigation under this Act except as necessary,

(a) to conduct an investigation under section 17.1;

(b) to refer a matter under section 17.2;

(c) to enforce a penalty imposed under section 17.9; or

(d) to comply with the requirements of section 17.12. 2014, c. 13, Sched. 8, s. 13.

Same

(3) The registrar and any person acting for or under the registrar's direction shall not give or be compelled to give evidence in any court or in any other proceeding in respect of information, documents or things obtained in the course of conducting an investigation under this Act except,

(a) in a prosecution for perjury;

(b) in a prosecution for an offence under this Act; or

(c) in an application for judicial review of a finding of or penalty imposed by the registrar. 2014, c. 13, Sched. 8, s. 13.

Annual report

17.12 The annual report of the Integrity Commissioner (who is appointed as registrar under section 10 of this Act) required by section 24 of the *Members' Integrity Act, 1994* shall include,

(a) the number of investigations conducted by the Commissioner under this Act during the year, including the number of those investigations that were commenced, concluded or resumed during the year and the number of matters that the Commissioner refused to investigate or referred to another person or body during the year;

(b) a description in summary form of each investigation concluded or resumed, and of each matter referred, during the year; and

(c) any other information relevant to the administration of this Act the public disclosure of which the Commissioner believes to be in the public interest. 2014, c. 13, Sched. 8, s. 13.

DEMOCRACY WATCH

and

Applicant

ONTARIO INTEGRITY COMMISSIONER

Respondents

Court File Nos. 632/20 633/20
634/20 644/20 645/20 646/20
647/20 648/20 660/20

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at: Toronto

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