Court File No.: A-142-19
A-143-19

FEDERAL COURT OF APPEAL

DEMOCRACY WATCH

Appellant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

MEMORANDUM OF FACT AND LAW OF THE APPELLANT

DEMOCRACY WATCH

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TABLE OF CONTENTS

iv) The statute does not prevail over the appearance of bias because the appointment violated the constitutional principle of administrative independence
v) Democracy Watch had a legitimate expectation that the GIC would avoid an appearance of bias when appointing the Ethics Commissioner
vi) The doctrine of necessity does not prevail over the appearance of bias as the GIC could have easily used an appointment process that neutralized its bias

7. **The Court below erred in finding that the statutory power granted to the GIC to appoint the Commissioner of Lobbying prevailed over the common law duty of procedural fairness re: legitimate expectations and reasonable apprehension of bias**
    i) The Court below erred in finding that procedural fairness only owed to MPs
    ii) The GIC was biased when appointing the Commissioner of Lobbying
    iii) The statute does not prevail over the appearance of bias because the appointment violated constitutional principle of administrative independence
    iv) Democracy Watch had a legitimate expectation that the GIC would avoid an appearance of bias when appointing the Commissioner of Lobbying
    v) The doctrine of necessity does not prevail over the appearance of bias as the GIC could have easily used an appointment process that neutralized its bias

PART IV – ORDER SOUGHT

PART V – LIST OF AUTHORITIES

OVERVIEW

1. The Federal Court erred in fact and law in deciding that the process that led to the appointment of the Conflict of Interest and Ethics Commissioner ("**Ethics Commissioner**" – A-142-19) by the Governor in Council ("**GIC**") complied with purpose, text and legislative history of the requirement in the *Parliament of Canada Act* ("***PofC Act***") to consult with opposition party leaders before making the appointment, and in deciding that the separate process that led to the appointment of the Commissioner of Lobbying (A-143-19) complied with the purpose, text and legislative history of the same consultation requirement in the *Lobbying Act*. The GIC failed to consult with the opposition party leaders, and instead dictated both appointments.

2. The Federal Court also erred in law in deciding that both appointment processes complied with the common law duty of procedural fairness, as informed by provisions in the *Conflict of Interest Act* (S.C. 2006, c. 9, s. 2 – "***CofI Act***") and in the *Open and Accountable Government* code ("***PM Code***"). The Court erred in concluding that the duty was only owed to Members of Parliament ("**MPs**") and not also the Appellant as a representative of the public interest. In addition, given both the Ethics Commissioner and the Commissioner of Lobbying exercise adjudicative functions, their appointment processes must be compatible with the principle of procedural fairness that prohibits parties from appointing their own adjudicators. The GIC's appearance of bias in making the appointments was compounded by the fact that the Prime Minister and other members of the GIC were under investigation by the Ethics Commissioner and the Commissioner of Lobbying at the time the GIC made the appointments.

3. Given the central purpose of the *CofI* Act, and the *Lobbying Act*, is to enhance public confidence in the integrity of government, and given both commissioners exercise adjudicative functions under these acts, both commissioner positions are based on the constitutional principles of democracy and the rule of law, and the appointment processes and operations of both commissioners are subject to the constitutional principle of administrative independence. Therefore, the Federal Court erred in law in deciding that the statutory powers to appoint granted to the GIC in subsection 81(1) of the *PofC Act* (re: the Ethics Commissioner), and subsection

4.1(1) of the *Lobbying Act* (re: the Commissioner of Lobbying), prevail over the common law procedural fairness requirements.

PART I – STATEMENT OF FACTS

1. The Selection Process for the New Conflict of Interest and Ethics Commissioner

4. The Ethics Commissioner is an Officer of Parliament, appointed for a renewable seven-year term by the GIC after consultation with the leaders of every recognized party in the House of Commons, and approval by resolution of the House, required by subsection 81(1) of the *PofC Act*.[1]

5. Mary Dawson served as Ethics Commissioner from July 2007 to July 2014, was re-appointed for an two-year term from July 2014 to June 2016, and then for three successive six-month terms, the last ending January 8, 2018.[2] Mario Dion was appointed as the new Ethics Commissioner by Order in Council of the GIC on December 14, 2017, effective January 9, 2018.[3]

6. In June of 2017, Conservative Party of Canada ("**CPC**") Leader Andrew Scheer and then-New Democratic Party ("**NDP**") Leader Thomas Mulcair wrote a joint letter to the Prime Minister expressing concern about the GIC's failure to consult them on officer of Parliament appointments.[4]

7. On June 12, 2017, the NDP introduced a motion calling for the establishment of a special all-party House of Commons subcommittee which would review the government's nominees for officers of Parliament and other parliamentary positions.[5]

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[1] *Parliament of Canada Act*, R.S.C., 1985, c. P-1, subsection 81(1).
[2] Affidavit of Duff Conacher, paras.18 to 20 and 26, Exhibits N to S, and X, Appeal Book, Vol. 2, pp. 248-266, 279.
[3] Affidavit of Duff Conacher, para. 49, Exhibit NN, Appeal Book, Vol. 2, p. 347.
[4] Affidavit of Duff Conacher, para. 24, Exhibit V, Appeal Book, Vol. 2, p. 273.
[5] Affidavit of Duff Conacher, para. 25, Exhibit W, Appeal Book, Vol. 2, p. 276.

8. In a letter sent in July 2017, the Leader of the Government in the House of Commons, Minister Bardish Chagger ("**Minister Chagger**"), informed the leaders of the NDP and CPC of the ongoing selection process to fill the position of the Ethics Commissioner.[6]

9. However, the letter from Minister Chagger did not disclose the fact that 55 applicants had already applied for the Commissioner position, some of which met the statutory requirements.[7]

10. The GIC controlled the entire selection process for the Ethics Commissioner. The members of its selection advisory committee were: Chief of Staff to the President of the Treasury Board and Minister Chagger's Chief of Staff, both of whom are appointed by, and serve at the pleasure of, their ministers; and the Comptroller General of Canada and two Deputy Secretaries to the Cabinet, all three of whom are appointed by, and serve at the pleasure of, the GIC.[8]

11. The notice by which the GIC purported to comply with the consultation requirements in ss. 81(1) of the *PofC Act* was a letter by Minister Chagger sent December 5, 2017 to opposition party leaders that provided only six days to respond to the GIC's proposed nominee Mario Dion.[9]

12. On December 11, 2017, NDP House Leader Guy Caron sent a letter to Minister Chagger about the nomination of Mr. Dion requesting the "list of candidates who were short-listed for the position" and their qualifications, and the list of selection committee members, and stating:

> "Consultation means a request for opinion or advice. However, to form an opinion, it is imperative that the consulted parties be given the information that is necessary to provide an evidence-based opinion to make sure the process is truly open, transparent, merit-based and non-partisan."[10]

However, that day Minister Chagger issued a statement confirming the nomination of Mr. Dion.[11]

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[6] Affidavit of Levente-Adrian Balint, paras. 7-9, Exhibits B and C, Appeal Book, Vol. 3, Tab 1, pp. 405-408.
[7] Supplementary Affidavit of Duff Conacher, Exhibit B, Appeal Book, Vol. 3, Tab 3, page 474.
[8] Supp. Affidavit of Gaëlle Savard, Exhibit B, Appeal Book, Vol. 3, Tab 2, p. 464; *Financial Administration Act*, R.S.C., 1985, c. F-11, subsection 6(3) re: Comptroller General (hereinafter *FAA*). *Public Service Employment Act*, (S.C. 2003, c. 22, ss. 12, 13), s. 128 re: Chiefs of Staff, s. 127.1, re: Deputy Secretaries to PCO (hereinafter *PSEA*).
[9] Affidavit of Levente-Adrian Balint, paras. 10-11, Exhibit D, Appeal Book, Vol. 3, Tab 1, pp. 409-413.
[10] Supplemental Affidavit of Gaëlle Savard, Exhibit A, Appeal Book, Vol. 3, Tab 2, pp. 457-459.
[11] Affidavit of Duff Conacher, para. 37, Exhibit II, Appeal Book, Vol. 2, pp. 319-321.

13. Representatives of the NDP and the CPC both expressed concern that their party leaders had not been consulted about the selection of Mr. Dion: NDP House Leader Guy Caron in the House on December 12 and 13, 2017; NDP Ethics Critic Nathan Cullen in the House, and during a meeting of the House of Commons Standing Committee on Access to Information, Privacy and Ethics ("**Ethics Committee**"), on December 12th and; during that meeting, CPC MP Peter Kent stated that the letter from Minister Chagger effectively said "take it or leave it."[12]

14. Mr. Dion appeared as a witness to answer questions on his nomination at the meeting of the Ethics Committee on December 12, 2017. It was the only occasion for the Committee to question Mr. Dion. The meeting lasted a total of one hour and 15 minutes. With Government members of the Committee representing the majority, the Committee voted to recommend that Mr. Dion be confirmed by the House of Commons as the next Ethics Commissioner, with NDP MP Nathan Cullen abstaining from the vote in protest. The following day, December 13, 2017, the House of Commons voted to approve Mr. Dion's nomination, with the voting being done on division (with some Members of the House ("**MPs**") voting against the appointment).[13]

15. On December 14, 2017, by Order in Council number 2017-1557, the GIC appointed Mr. Dion as the new Ethics Commissioner with his appointment taking effect on January 9, 2018, for a seven-year term during which he will investigate and rule on every alleged violation of ethics rules by the GIC and its appointees, and MPs from all political parties.[14]

2. Matters Before Ethics Commissioner Dawson During New Commissioner Selection Process, and Failure of Ministers to Recuse Themselves

16. Through 2017, Ethics Commissioner Mary Dawson was conducting two investigations into allegations that Prime Minister Trudeau had violated the *CofI Act* by accepting the gift of a trip to the Aga Khan's private island in Bahamas. In the House of Commons on January 31, 2017, on April 4, 2017, April 11th, and April 13th, Minister Chagger defended the Prime Minister trip.[15]

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[12] Affidavit of Duff Conacher, paras. 38-47, Exhibits JJ, KK, LL, Appeal Book, Vol. 2, pp. 323-4, 331-2, 339-344.
[13] Affidavit of Duff Conacher, para. 39, Exhibit MM, Appeal Book, Vol. 2, pp. 345-346.
[14] Affidavit of Levente-Adrian Balint, para. 15, Exhibit H, Appeal Book, Vol. 3, pp. 453-454.
[15] Affidavit of Duff Conacher, paras. 27-28, Exhibits Y, Z, AA, and BB, Appeal Book, Vol. 2, pp. 282-293.

17. Ministers are required by ss. 25(1) of the *CofI Act* to make declarations in the Ethics Commissioner's online Public Registry when they recuse themselves from a decision-making process. On May 15, 2017, Prime Minister Trudeau's office issued a statement saying he was recusing himself from the Ethics Commissioner appointment process due to the Aga Khan trip investigation, and designating Minister Chagger "to fulfil any relevant obligations in relation to the appointment process..." There is no recusal statement from the Prime Minister in the Registry.[16]

18. In November 2017, Ethics Commissioner Dawson began an investigation as requested by two MPs into whether Minister of Finance Bill Morneau ("**Minister Morneau**") breached the *CofI Act* by overseeing *Bill C-27, An Act to amend the Pension Benefits Standards Act, 1985* given that, at that time, Minister Morneau owned shares in his family's pension management company Morneau Shepell Inc. which could benefit from the Bill. Minister Chagger had defended Minister Morneau's actions in the House of Commons on October 17, 2017.[17]

19. In November 2017, Ethics Commissioner Dawson also had before her a request from Democracy Watch re: whether Minister Morneau had failed to issue a recusal declaration.[18] As well, on November 30, 2017, Ethics Commissioner Dawson initiated a process of engaging with Minister Morneau concerning his November 2015 sale of shares he held in Morneau Sheppell Inc., just before Minister Morneau announced tax changes affecting share sales.[19]

20. None of the matters listed above were concluded by Ethics Commissioner Dawson before the GIC made the ultimate decision in early December 2017 to appoint Mario Dion.

21. While the December 5, 2017 letter from Minister Chagger referred to above in paragraph 12 claims that the Prime Minister and "certain senior officials in the Prime Minister's Office" recused themselves from the appointment process, no recusal declarations are in the Public Registry. The letter does not say other Ministers, notably Minister Morneau, recused themselves.

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[16] Affidavit of Duff Conacher, paras. 22, 23, Exhibits T, U, Appeal Book, Vol. 2, pp. 267-272.
[17] Affidavit of Duff Conacher, paras. 29, 32-34, Exhibits EE, FF, Appeal Book, Vol. 2, pp. 304-310.
[18] Affidavit of Duff Conacher, paras. 30, 31, Exhibits CC, DD, Appeal Book, Vol. 2, pp. 294-303.
[19] Affidavit of Duff Conacher, para. 35, Exhibit GG, Appeal Book, Vol. 2, pp. 311-313.

3. The Selection Process for the New Commissioner of Lobbying

22. The Commissioner of Lobbying is an Officer of Parliament, appointed for a renewable seven-year term by the Governor in Council ("**GIC**") following consultation with the leaders of every recognized party in the House of Commons and Senate, and approval by resolution of the House and the Senate, in accordance with subsection 4.1(1) of the *Lobbying Act*.[20]

23. Karen Shepherd served as the Commissioner of Lobbying from July 2009 to July 2016, and was then reappointed for three successive six-month terms, the last ending December 29, 2017.[21] Nancy Bélanger was appointed as the new Commissioner of Lobbying by Order in Council of the GIC on December 14, 2017, effective December 30, 2017.[22]

24. In June 2017, the Prime Minister wrote to the leaders of the recognized parties in the House of Commons informing them of the job notice for the position of Commissioner of Lobbying. The letter invited both leaders to share the notice with Canadians and with stakeholders who should be consulted. Similar letters were sent to the leaders of recognized parties and groups in the Senate.[23]

25. However, the letter from the Prime Minister did not disclose the fact that 58 applicants had already applied for the Commissioner position, and that "many met various qualifications."[24]

26. In June of 2017, Conservative Party of Canada ("**CPC**") Leader Andrew Scheer and then-New Democratic Party ("**NDP**") Leader Thomas Mulcair wrote a joint letter to Prime Minister Trudeau expressing their concern about the Trudeau Cabinet's failure to consult them on appointments of officers of Parliament.[25]

27. On June 12, 2017, the NDP introduced a motion to change the appointment process for officers of Parliament calling for the establishment of a special all-party House of Commons

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[20] *Lobbying Act*, RSC 1985, c.44 (4th Supp.), subsection 4.1(1).
[21] Affidavit of Duff Conacher, para. 14-15, 27, Exhibits M-Q and BB, Appeal Book, Vol. 5, pp. 738-752, 786-788.
[22] Affidavit of Duff Conacher, para. 41, Exhibit KK, Appeal Book, Vol. 5, pp. 843-845.
[23] Affidavit of Levente-Adrian Balint, paras. 7 and 8, Exhibit B, Appeal Book, Vol. 6, pp. 901-907.
[24] Supplementary Affidavit of Duff Conacher, Exhibit B, Appeal Book, Vol. 6, p. 1086.
[25] Affidavit of Duff Conacher, para. 24, Exhibit Z, Appeal Book, Vol. 5, pp. 780-782.

subcommittee to review the government's nominees, including one member from each of the recognized parties in the House, with a deputy Speaker serving as its chair.[26]

28. On July 4, 2017, Mr. Mulcair responded to the Prime Minister's letter of June 2017, again expressing concerns about the appointment process for officers of Parliament, and again requesting that the Prime Minister use the process proposed by the NDP in its motion of June 12, 2017.[27]

29. The GIC controlled the entire selection process for the Commissioner of Lobbying, with a selection advisory committee of four people who all serve at the GIC's pleasure: Janine Sherman, Deputy Secretary to the Cabinet (Senior Personnel and Public Service Renewal); Yaprak Baltacioglu, Secretary of the Treasury Board; Sabina Saini, Chief of Staff to the President of the Treasury Board, and; Hilary Leftick, Director of Public Appointments, Prime Minister's Office.[28]

30. The actual notice by which the GIC purported to comply with the consultation requirements set out in subsection 4.1(1) of the *Lobbying Act* was issued by the Prime Minister by a letter delivered on November 23, 2017 to the leaders of the recognized parties in the House of Commons and leaders of the recognized parties and groups in the Senate. The letters informed each leader that the government proposed Ms. Nancy Bélanger for appointment as the next Commissioner of Lobbying.[29] Each leader was asked to the respond to the nomination within seven calendar days from the date of the letter and that the matter be kept confidential.

31. On November 29, 2017, NDP House Leader Guy Caron sent a letter to the Prime Minister about the nomination requesting the "list of candidates who were short-listed for the position" and their qualifications, and the list of selection committee members, and stating that "A simple notice of consultation does not constitute consultation and goes against the essence of the law."[30] However, on November 30, 2017, the Prime Minister issued a news release

[26] Affidavit of Duff Conacher, para. 25, Exhibit AA, Appeal Book, Vol. 5, pp. 783-785.
[27] Affidavit of Levente-Adrian Balint, para 9, Exhibit C, Appeal Book, Vol. 6, pp. 908-910.
[28] Affidavit of Duff Conacher, para. 35, Exhibit GG, Appeal Book, Vol. 5, page 815. *FAA*, subsection 6(2) re: Secretary to Treasury Board. *PSEA*, sections 127.1 and 128, re: Chief of Staff and Deputy Secretaries to PCO.
[29] Affidavit of Levente-Adrian Balint, paras. 10 to 12, Exhibit D, Appeal Book, Vol. 6, Tab 1, pp. 911-917.
[30] Supplemental Affidavit of Karine Bisson, Exhibit F, Appeal Book, Vol. 6, Tab 2, pp. 1075-1077.

announcing Ms. Bélanger's nomination. The nomination certificate was tabled in the House and Senate.[31]

32. On December 6, 2017, the House of Commons Ethics Committee held a meeting to hear from, and question, Nancy Bélanger and to vote on her proposed nomination to be Commissioner of Lobbying. At the hearing, Ms. Bélanger stated that she had only applied for the position of Information Commissioner. During an interview for the Information Commissioner position she was asked if she would consider applying for the position of Commissioner of Lobbying. She then reported that she received a 25-second telephone call from the chief of staff of the President of the Treasury Board informing her that her name would likely be put forward for Commissioner of Lobbying. She was informed on November 22 that in fact her name would be "on the letter."[32]

33. At the hearing, NDP Ethics Critic MP Nathan Cullen, in questioning Ms. Bélanger, expressed disappointment with the lack of consultation with the recognized parties in the House:

> … for the committee's understanding, we received a letter from the Prime Minister's Office with just your name on it, and it said, "We're consulting. This is the only person on the list, and this is what's going to happen next," which is what we're in now, and then eventually if we pass this stage, we move to Parliament.
> … The law talks about consultation, and what most Canadians would think of as consultation is a conversation. The government changed the process, so that you submitted your application."[33]

34. Later in the hearing, NDP MP Cullen abstained from the Ethics Committee's vote recommending to the House that Nancy Bélanger be approved as Commissioner of Lobbying.[34]

35. On December 12, 2017, Mr. Caron, and Mr. Cullen asked the Prime Minister questions in the House about government appointments, and stated clearly that the NDP's position was that it was not consulted concerning the person nominated as the next Commissioner of Lobbying.[35]

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[31] Affidavit of Levente-Adrian Balint, para. 13, Exhibits E, F, G, Appeal Book, Vol. 6, Tab 1, pp. 918-919, 925, and 957-960.
[32] Affidavit of Duff Conacher, para. 33, Exhibit GG, Appeal Book, Vol. 5, pp. 805-831 at p. 811.
[33] Affidavit of Duff Conacher, para. 34, Exhibit GG, Appeal Book, Vol. 5, pp. 805-831 at p. 811.
[34] Affidavit of Duff Conacher, para. 36, Exhibit GG, Appeal Book, Vol. 5, pp. 805-831 at p. 817.
[35] Affidavit of Duff Conacher, para. 39, Exhibit II, Appeal Book, Vol. 5, pp. 838-840.

36. On December 13, 2017, the House of Commons approved the appointment of Ms. Bélanger on division (meaning some MPs voted against the appointment).[36] The next day, the GIC issued Order in Council 2017-1564 appointing Ms. Bélanger as the new Commissioner of Lobbying with her appointment taking effect on December 30, 2017, for a seven-year term during which she will rule on every alleged violation of lobbying rules by lobbyists in their relationships with the GIC and its staff and appointees, MPs and senators from all parties, and other office holders.[37]

4. Matters Before Commissioner of Lobbying Shepherd During New Commissioner Selection Process, and Failure of Ministers to Recuse Themselves

37. On October 25, 2016, Democracy Watch filed a petition with the Commissioner of Lobbying alleging violations of the *Lobbyists' Code of Conduct* ("***Lobbyists' Code***") by Barry Sherman, Chairman of Apotex Inc., because according to media reports he had assisted in organizing a fundraising event attended by Minister of Finance Bill Morneau ("**Minister Morneau**"), and because Apotex Inc. was registered to lobby Finance Canada.[38] The Commissioner confirmed in a letter dated October 25, 2016 that her office was investigating.[39]

38. On November 4, 2016, Democracy Watch filed a second petition with the Commissioner of Lobbying alleging violations of the *Lobbyists' Code* by Barry Sherman, Chairman of Apotex Inc., because he organized and hosted a fundraising event attended by then-Liberal Party Leader Justin Trudeau in August 2015 and because Apotex Inc. was registered to lobby the Office of the Prime Minister.[40] The Commissioner of Lobbying confirmed in a letter dated November 18, 2016 that her office was investigating the situation and those alleged violations.[41]

39. On March 1, 2017, Democracy Watch filed a third petition with the Commissioner of Lobbying alleging violations of the *Lobbyists' Code* by Mickey MacDonald, board member of Clearwater Seafoods Inc., because he organized and hosted a fundraising event attended by then-Liberal Party Leader Trudeau in August 2014, and because Clearwater Seafoods Inc. was

[36] Affidavit of Duff Conacher, para. 40, Exhibit JJ, Appeal Book, Vol. 5, pp. 841-842.
[37] Affidavit of Duff Conacher, para. 41, Exhibit KK, Appeal Book, Vol. 5, pp. 843-845.
[38] Affidavit of Duff Conacher, para. 17, Exhibit R, Appeal Book, Vol. 5, pp. 753-756.
[39] Affidavit of Duff Conacher, para. 18, Exhibit S, Appeal Book, Vol. 5, pp. 757-758.
[40] Affidavit of Duff Conacher, para. 19, Exhibit T, Appeal Book, Vol. 5, pp. 759-763.
[41] Affidavit of Duff Conacher, para. 20, Exhibit U, Appeal Book, Vol. 5, pp. 764-765.

registered to lobby the Office of the Prime Minister. In a letter dated March 3, 2017, the Commissioner confirmed that her office was investigating the situation.[42]

40. In a letter dated July 12, 2017, Democracy Watch filed a fourth petition with the Commissioner of Lobbying alleging violations of the *Lobbyists' Code* by staff members of the Council of Canadian Innovators ("**CCI**") because they had assisted with the 2015 federal election campaign of Minister of Foreign Affairs Chrystia Freeland ("**Minister Freeland**"), and because CCI was registered to lobby Minister Freeland's department, Global Affairs Canada.[43] In a letter dated July 20, 2017, the Commissioner of Lobbying confirmed that her office was investigating.[44]

41. Commissioner Shepherd was conducting her investigations under rules of the *Lobbyists' Code*, the code established under the *Lobbying Act* that, among other things, prohibits lobbyists from engaging in activities that could place public office holders (including members of the GIC) in a real or apparent conflict of interest.[45] A finding of a breach of those rules would mean that the Prime Minister, Minister Morneau and Minister Freeland were in a conflict of interest.

42. Commissioner Shepherd had not issued rulings on any of Democracy Watch's four petitions alleging violations of the *Lobbyists' Code* in situations involving the Prime Minister or other ministers before the new Commissioner was appointed by the GIC on December 14, 2017.[46]

43. On May 15, 2017, Prime Minister Trudeau's office issued a statement that claimed he was recusing himself from the appointment process for the next Ethics Commissioner due to the Commissioner's ongoing Aga Khan trip investigation, and that he had designated Minister Chagger "to fulfil any relevant obligations in relation to the appointment process..."[47]

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[42] Affidavit of Duff Conacher, paras. 21, 22, Exhibits V, W, Appeal Book, Vol. 5, pp. 766-773.
[43] Affidavit of Duff Conacher, para. 29, Exhibit DD, Appeal Book, Vol. 5, pp. 792-799.
[44] Affidavit of Duff Conacher, para. 30, Exhibit EE, Appeal Book, Vol. 5, pp. 800-801.
[45] *Lobbyists' Code of Conduct*, Rule 6, Rule 8, Rule 9.
[46] Affidavit of Duff Conacher, para. 31, Appeal Book, Vol. 5, p. 566.
[47] Affidavit of Duff Conacher, paras. 23-24, Exhibits X, Y, Appeal Book, Vol. 5, pp. 774-779.

44. Even though Commissioner of Lobbying Shepherd, like the Ethics Commissioner, was investigating situations involving the Prime Minister Trudeau (and other ministers), neither Prime Minister Trudeau nor the ministers recused themselves from the decision-making process concerning the appointment of the next Commissioner of Lobbying.

PART II – ISSUES RAISED BY THIS APPLICATION

Issue 1: The standard of review.

Issue 2: Whether the Court below erred in finding that the Governor in Council ("**GIC**") did not violate subsection 81(1) of the *Parliament of Canada Act* ("***PofC Act***") by failing to consult with the leaders of every recognized party in the House of Commons before appointing the Ethics Commissioner.

Issue 3: Whether the Court below erred in finding that the GIC did not violate subsection 4.1(1) of the *Lobbying Act* by failing to consult with the leaders of every recognized party in the House of Commons before appointing the Commissioner of Lobbying.

Issue 4: Whether the Court below erred in finding that the duty of procedural fairness created by the *PofC Act*'s mandating of a consultation with opposition party leaders as part of the process for appointing the Ethics Commissioner was owed only to the party leaders, and not to the public whose interests the Appellant represents.

Issue 5: Whether the Court below erred in the duty of procedural fairness created by the *Lobbying Act*'s mandating of a consultation with opposition party leaders as part of the process for appointing the Commissioner of Lobbying was owed only to the party leaders, and not to the public whose interests the Appellant represents.

Issue 6: Whether the Court below erred in finding that the statutory power granted to the GIC to appoint the Ethics Commissioner prevailed over the common law principles of procedural fairness concerning legitimate process expectations and reasonable apprehensions of bias.

Issue 7: Whether the Court below erred in finding that the statutory power granted to the GIC to appoint the Commissioner of Lobbying prevailed over the common law principles of procedural fairness concerning legitimate process expectations and reasonable apprehension of bias.

PART III – LAW AND ARGUMENT

1. The Standard of Review is Correctness

45. The standard of appellate review for the errors of fact and law in the decision of the Court below is correctness.[48]

2. The Court below erred in finding that the Governor in Council's process for appointing the new Ethics Commissioner did not violate the *PofC Act*

46. The *PofC Act* provides at subsection 81(1) that "the Governor in Council shall appoint a Conflict of Interest and Ethics Commissioner after consultation with the leader of every recognized party in the House of Commons and approval of the appointment by resolution of that House."[49]

47. The Ethics Commissioner occupies a central place and performs an indispensable function in the democratic process. The Commissioner has two statutory functions: 1) ensuring, under section 87 of the *PofC* Act and under the *CofI Act*, that public office holders (members of the GIC, its staff and appointees, and certain GIC appointees) comply with the ethics and integrity requirements of the *CofI Act*; and 2) ensuring under section 86 of the *PofC Act* that MPs comply with their own ethics code. The Ethics Commissioner is the only Officer of Parliament for whom detailed qualification criteria are prescribed, equivalent to those of a judge.

48. Given their purposes and provisions, the *PoC Act* and *CofI Act* are statutes that further the unwritten principles of the Constitution of Canada of democracy, constitutionalism and the rule of law.[50] As a result, they must be interpreted in a manner that promotes these principles.

49. The *PoC Act* does not set out criteria on what should constitute consultation. However, Parliament's intention was expressed by the House of Commons Standing Committee on

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[48] *Wenham v. Canada (Attorney Genera)*, 2018 FCA 199 at para. 59; *TELUS Communications Inc. v. Wellman*, 2019 SCC 19 at para. 30.
[49] *Parliament of Canada Act*, R.S.C., 1985, c. P-1, subsection 81(1).
[50] *Reference Re Senate Reform*, 2014 SCC 32, para. 25.

Procedure and House Affairs in its unanimous, all-party report on Bill C-34, the predecessor to Bill C-4, that created the Ethics Commissioner position. That Committee expressed concern that a draft of the Bill did not provide for "meaningful consultation" with MPs in the process of selection of the Ethics Commissioner, and recommended that the Bill be amended to require a consultation process with the leaders of each recognized party in the House of Commons.[51] The House passed a resolution accepting the report, and the GIC amended Bill C-34 to include this recommended measure, which was also included in Bill C-4 which replaced Bill C-34 and was enacted in 2004.[52]

50. The consultation required by the *PofC Act* is subject to the duty of procedural fairness. Given the *PofC Act* is silent on the content of that duty, the principles of procedural fairness apply, as defined in *Baker*.[53] Given the *Act*'s constitutional objects, the intent of Parliament, and the Ethics Commissioner's critical role of adjudicating on alleged ethics violations by members of the GIC and all MPs, a very high degree of procedural fairness is required.

51. The GIC failed to fulfill its statutory duty to consult. The nominee for appointment was selected solely by the GIC, and the opposition party leaders were essentially told that the nominee would be the person appointed. That's not consultation, that's dictation.

52. The Court below erred in fact and law by concluding that "there was consultation" that began with the letters sent by Minister Chagger to opposition party leaders in July 2017.[54] As the Court below notes, the Government's own sworn Affidavit by Levente-Adrian Balint states that these letters were not consultation as required by ss. 81(1) the *PofC Act*.[55] At best, these letters were no more than invitations to share the appointment opportunity notice with stakeholders.

53. An actual consultation letter from Minister Chagger would have: disclosed the fact that 55 applicants had already applied for the Ethics Commissioner position in the spring of 2017;

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[51] Affidavit of Duff Conacher, para. 10, Exhibit C, Appeal Book, Vol. 2, pp. 135-137.
[52] Affidavit of Duff Conacher, paras. 11-12, Exhibits D, F and G, Appeal Book, Vol. 2, pp. 138-145, 172-180.
[53] *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, 1999 CanLII 699 (SCC), at paras. 21-28 (hereinafter *Baker*).
[54] *Democracy Watch v. Attorney General of Canada*, 2018 FC 1290, at para. 74.
[55] *Democracy Watch v. Attorney General of Canada*, 2018 FC 1290, at para. 74. Affidavit of Levente-Adrian Balint, para. 7, and Exhibits B and C, Appeal Book, Vol. 3, Tab 1, at p. 399, and pp. pp. 405-408.

included the list of applicants the GIC had found to be qualified,[56] and; asked opposition party leaders for their opinion concerning the suitability of those applicants.

54. Instead of consulting from July 2017 on with opposition party leaders concerning the qualified applicants, the GIC misled them by failing to inform them that the government had already found qualified applicants, and continued controlling the selection process entirely using a committee made up of people who serve at the pleasure of the GIC.

55. The Court below also erred in fact and law by concluding that the GIC consulted with opposition party leaders in December 2017. The GIC's only step at that time was a letter sent on December 5, 2017 by Minister Chagger to the opposition party leaders inviting them to provide their "thoughts on this proposed nomination by no later than Monday, December 11, 2017."

56. The Court also erred in fact and law by deciding that the hearings by the Ethics Committee of the House of Commons were part of the GIC's consultation with the opposition party leaders.[57] The Ethics Committee is constitutionally separate from the GIC.[58] The members of the GIC do not sit on the Committee, nor do the opposition party leaders, nor do they make decisions for the Committee. Subsection 81(1) of the *PofC Act* states that the appointment of the Ethics Commissioner will be made not only after consultation with opposition party leaders but also after "approval of the appointment by resolution" of the House. The Ethics Committee hearings were, in fact and law, only a step in the House of Commons' procedures for approving the appointment.

57. Overall, the Court below erred in law in concluding that the steps taken by GIC met the legal definition of "consultation." As the Court below notes at para. 84, the dictionary definition of "consultation" includes, at the low end, seeking "advice" or an "opinion" and, at the high end, "permission" or "approval" and, in any case, taking into account and considering advice given.[59]

58. The Supreme Court of Canada's formulation of that duty in the aboriginal law context is that consultation includes, at the low end, "to give notice, disclose information, and discuss any

[56] Supplementary Affidavit of Duff Conacher, Exhibit B, Appeal Book, Vol. 3, Tab 3, page 474.
[57] *Democracy Watch v. Attorney General of Canada*, 2018 FC 1290, at paras. 85-86 and 90.
[58] *Constitution Act, 1867*, 30 & 31 Vict, c 3, sections 11-13 (re: GIC) and 37-52 (re: House of Commons).
[59] *Democracy Watch v. Attorney General of Canada*, 2018 FC 1290, at paras. 80-84, and 91-98.

issues raised in response to the notice" and, at the high end, "the opportunity to make submissions for consideration, formal participation in the decision-making process, and provision of written reasons to show" that concerns were considered and had an impact on the decision.[60]

59. Consultation must be meaningful and "anticipates bi-lateral communication in which the person consulted has the opportunity to question, to receive explanation and to provide comment" – it must go beyond "paying lip service to the requirement."[61] It should also allow for each party to be informed of each other's position, and provide the opportunity to give and receive information so both sides are heard and both articulate the factors that should guide a decision.[62]

60. The GIC's actions did not constitute a consultation even at the lowest end of that spectrum. While the GIC gave notice, the response period for each opposition party leader to provide their "thoughts" on the single proposed nominee was extremely short, during one of the busiest periods in the parliamentary calendar. The GIC gave no indication that it was prepared to consider any other nominee. The GIC also did not disclose full information as it withheld the fact that, before July 2017, the government already had some qualified applicants. The GIC also indicated that Mr. Dion was the only qualified candidate found through the search process, which was not true. And the GIC did not discuss any issues or take into account any advice or opinions raised in response to the notice it sent. It did not respond to concerns raised by the NDP until after the appointment.

61. In the context of school closures, even with no statutory requirement, a school board was found to have breached a common law duty to consult the affected community in a decision to close a school. The Court in *Bezaire v. Windsor Roman Catholic Separate School Board* found that the board had only provided a "pro forma" opportunity to parents to present views and alternatives that did not amount to consultation.[63] The opportunity the GIC gave to opposition party leaders was even more "pro forma." It was not, in any sense, an actual consultation.

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[60] *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, 2004 SCC 73, at paras. 43-45 (hereinafter *Haida Nation*).
[61] *Gardner v. Williams Lake (City)*, 2006 BCCA 307, paras. 29-30 (hereinafter *Gardner*).
[62] *Lakeland College Faculty Association v. Lakeland College*, 1998 ABCA 504, paras. 37-38 (hereinafter *Lakeland*).
[63] *Bezaire v. Windsor Roman Catholic Separate School Board*, 1992, CanLII 7675 (ON SC), pp. 15-16 (*Bezaire*).

62. For all the above reasons, the Court below erred in fact and law by finding the GIC complied with the requirement in ss. 81(1) of the *PofC Act* to consult with the leaders of the recognized parties in the House of Commons before appointing the Ethics Commissioner.

3. The Court below erred in finding that the Governor in Council's process for appointing the new Commissioner of Lobbying did not violate the *Lobbying Act*

63. The *Lobbying Act* provides at subsection 4.1(1) that "the Governor in Council shall … appoint a Commissioner of Lobbying after consultation with the leader of every recognized party in the Senate and House of Commons" and approval by resolutions of both chambers.[64] The *Lobbying Act* may be seen as one of the statutes that furthers the unwritten principles of the Constitution of democracy, constitutionalism and the rule of law[65] as it aims, along with the *Conflict of Interest Act* and other statutes, to ensure the democratic integrity of lobbyists' relationships with members of the GIC and other office holders. As a result, the *Lobbying Act* must be interpreted in a manner that promotes these principles.

64. The Commissioner of Lobbying position was created by the enactment of Bill C-2 in 2006 as an officer of Parliament. The Commissioner has frequently emphasized the independence of the position, highlighting the importance of the change from a Registrar of Lobbyists chosen solely by the GIC (pre-2006) to a Commissioner of Lobbying chosen after consultation with opposition party leaders and approval of both Houses of Parliament (post-2006).[66]

65. The Commissioner of Lobbying has broad powers as the front-line enforcer of the *Lobbying Act*, and enforcer and adjudicator of the *Lobbyists' Code*.[67] Lobbyists are required by statute to comply with the *Lobbyists' Code*. The *Code*'s preamble states its purpose is enhancing the public trust and confidence in the integrity of government decision-making that "is vital to a free and democratic society" and its principles and rules are aimed at ensuring honest,

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[64] *Lobbying Act*, R.S.C. 1985, c. 44 (4th Supp.), subsection 4.1(1).
[65] *Reference Re Senate Reform*, 2014 SCC 32, para. 25.
[66] Affidavit of Duff Conacher, paras. 8-12, Exhibits B, F-K Appeal Book, Vol. 5, pp. 578-582, 641, 646, 654, 672, 676, 716, 724.
[67] *Lobbying Act*, sections 10.4 and 10.5.

transparent, ethical lobbying.[68] This Court has affirmed unanimously that the *Act* has the same purpose.[69]

66. The *Lobbying Act* does not set out criteria on what should constitute consultation. Parliament's intention was expressed by the responsible minister, the Hon. John Baird, President of the Treasury Board, when Bill C-2 was introduced for second reading in the House of Commons on April 25, 2006. He stated that the Bill created:

> "…a new commissioner of lobbying with the power to investigate violations and enforce the rules. Our proposal is to take this out of the executive branch, out of the Treasury Board, and make this commissioner an officer of the House so that all Canadians will know that this commissioner has genuine independence from government…"[70]

67. The consultation required by the *Lobbying Act* is subject to the duty of procedural fairness. Since the *Act* is silent on the content of that duty, the principles of procedural fairness apply.[71] Given the *Act*'s constitutional objects, Parliament's intent, and the Commissioner of Lobbying's critical function of adjudicating on alleged violations of rules for lobbyists' relations with the GIC, all MPs, Senators and office holders, a very high degree of procedural fairness is required.

68. The GIC failed to fulfill its statutory duty to consult. The nominee for appointment was chosen solely by the GIC, and the leaders of the parties in the House and Senate were essentially told that the nominee would be the person appointed. That's not consultation, that's dictation.

69. The Court below erred in fact and law in concluding that the GIC's process for appointing the Commissioner of Lobbying complied with the statutory duty to consult in exactly the same ways it erred in concluding that the Ethics Commissioner appointment process complied with the statutory duty, as summarized above in paragraphs 52-61. To summarize, the Court below erred in fact by concluding that "there was consultation" that began with the letters sent by the Prime Minister to party leaders in the House and Senate in June 2017.[72] The Government's own sworn Affidavit states that these letters were not consultation as required by

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[68] *Lobbying Act*, section 10.2 and 10.3; *Lobbyists Code of Conduct*, "Principles" and "Rules".
[69] *Democracy Watch v. Campbell*, [2010] 2 F.C.R. 139, 2009 FCA 79, paras. 47-48.
[70] Affidavit of Duff Conacher, paras. 10, Exhibit B, Appeal Book, Vol. 5, pp. 578-582 at p. 582.
[71] *Baker*, at paras. 21-28.
[72] *Democracy Watch v. Attorney General of Canada*, 2018 FC 1291, at para. 79.

ss. 4.1(1) the *Lobbying Act*.[73] At best, the letters were no more than invitations to distribute the appointment opportunity notice.

70. An actual consultation letter from the Prime Minister would have disclosed the fact that 58 applicants had already applied for the Commissioner of Lobbying position, and that "many met various qualifications,"[74] and included at least a short list of applicants who met qualifications and asked the opposition party leaders to provide an opinion. Instead, the GIC misled opposition party leaders about the state of the search process and continued controlling the selection process entirely through to November 2017, using a committee whose members all serve at the GIC's pleasure.

71. The Court below also erred in fact by concluding that the GIC consulted with other party leaders in November 2017.[75] The GIC's only step taken to consult was a November 23, 2017 letter from the Prime Minister to the leaders of parties in the House and Senate that gave them seven days to respond to the name of the candidate the GIC had selected.

72. The Court also erred in fact and law by deciding that the hearings by the Ethics Committee of the House of Commons and Senate Committee of the Whole were part of the GIC's consultation with the opposition party leaders.[76] The committees are constitutionally separate from the GIC.[77] Subsection 4.1(1) of the *Lobbying Act* states that the appointment of the Commissioner will be made not only after consultation with other party leaders but also after "approval of the appointment by resolution" of the Senate and House. The committee hearings were, legally and factually, only a step in their consideration of whether to approve the appointment.

73. The Court below also erred in law in concluding that the steps taken by GIC met the legal definition of "consultation."[78] The GIC's actions did not comply with the duty to consult even at

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[73] Affidavit of Levente-Adrian Balint, paras. 7 and 8, Appeal Book, Vol. 6, Tab 1, page 895.
[74] Appeal Book, Vol. 6, Supplementary Affidavit of Duff Conacher, Exhibit B, page 1086.
[75] *Democracy Watch v. Attorney General of Canada*, 2018 FC 1291, at paras. 93 and 96. Note: In para. 93, the Court below refers to the "July letters" but intended to write the "November letters" as the July letters did not mention Ms. Bélanger as the nominee given the GIC did not choose her until November.
[76] *Democracy Watch v. Attorney General of Canada*, 2018 FC 1291, at paras. 93-95 and 99.
[77] *The Constitution Act, 1867*, 30 & 31 Vict, c 3, sections 11-13 (GIC), sections 21-36 (Senate) and 37-2 (House).
[78] *Democracy Watch v. Attorney General of Canada*, 2018 FC 1291, at paras. 80-91, 98, and 101-108.

the lowest end of the spectrum based on the dictionary definition of "consultation"[79] or as defined by the courts in the context of aboriginal law.[80] While the GIC gave notice, the response period for each leader to respond to the single nominee was extremely short. The GIC gave no indication that it was prepared to consider any other nominee. The GIC also did not disclose full information as it withheld the fact that, before July 2017, it already had many applicants that met qualifications. In November 2017, the GIC indicated Ms. Bélanger was the only qualified candidate it had found, which was not true. And the GIC did not discuss any issues or take into account any advice or opinions raised in response to its notice. It did not even respond to concerns raised by the NDP.

74. Following the principles set out in the rulings in the *Bezaire*, *Gardner*, *Lakeland* and *Haida Nation* cases, the GIC's notice to party leaders was not an actual consultation.[81]

75. For all the above reasons, the Court below erred in fact and law in deciding that the GIC complied with the requirement in subsection 4.1(1) of the *Lobbying Act* to consult with the leaders of the parties in the House and Senate before appointing the new Commissioner of Lobbying.

4. The Court below erred in finding that the consultation required by the *PofC Act* before the appointment of the Ethics Commissioner created a duty of procedural fairness owed only to leaders of opposition parties

76. The Court below erred in deciding that the common law duty of procedural fairness concerning consultation during the appointment process for the Ethics Commissioner is owed by the GIC only to opposition party leaders.[82]

77. The Ethics Commissioner has a dual role: 1. under subsections 86(1) to (3) of the *PofC Act*, performing duties under rules of the House of Commons relating to the conduct of MPs, and; 2. under subsections 86(4) and 87, enforcing the *CofI Act* that applies to the Prime Minister and other GIC members, and other public office holders (including staff and appointees of the

[79] *Democracy Watch v. Attorney General of Canada*, 2018 FC 1291, at para. 92.
[80] *Haida Nation*, *supra* at paras. 43-45.
[81] *Bezaire*, *supra* pp. 15, 16; *Gardner*, *supra* at paras. 29-30; *Lakeland*, *supra* at paras. 37-38.
[82] *Democracy Watch v. Attorney General of Canada*, 2018 FC 1290, at paras. 99-103.

GIC).

78. Subsection 86(4) of the *PofC Act* explicitly states that the Ethics Commissioner is not under the control or even oversight of Members of Parliament when enforcing the *CofI Act*.

79. When enforcing the *CofI Act*, the Ethics Commissioner exercises statutory, quasi-judicial, rule of law, and democracy protection, enforcement public duties and powers aimed at maintaining the integrity of the Government of Canada, not just for parliamentarians but for all Canadians.

80. Furthermore, during the appointment process, it was known that the new Ethics Commissioner would inherit investigations of a petition by the Appellant, and petitions by MPs.[83] Whether the Appellant had a clear legal right to have its petition ruled on by the Ethics Commissioner, this Court has decided that the Appellant has standing to apply in the public interest for judicial review of the rulings by the Ethics Commissioner concerning petitions filed by MPs.[84]

81. It is acknowledged that the principles of procedural fairness do not give the Appellant on its own behalf, or as the public's representative, a right to participate in the appointment process. However, based on *Baker*,[85] both the Appellant in its role as a petitioner in an ongoing proceeding before the Ethics Commissioner, and the public it represents, had a legitimate expectation that the GIC would consult with opposition party leaders as required by ss. 81(1) of the *PofC Act* before appointing the Ethics Commissioner.

5. The Court below erred in finding that the consultation required by the *Lobbying Act* before the appointment of the Commissioner of Lobbying created a duty of procedural fairness owed only to leaders of opposition parties

82. For reasons similar to those set out above under Issue 4, the Court below erred in deciding that the duty of procedural fairness concerning consultation before Commissioner of

[83] Affidavit of Duff Conacher, paras. 27-35, Exhibits Y, Z, AA-GG, Appeal Book, Vol. 2, pp. 282-313.
[84] *Democracy Watch v. Canada (Attorney General)*, 2018 FCA 194, at paras. 15-23.
[85] *Baker*, at paras. 21-28. Also *Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services)*, [2001] 2 SCR 281, 2001 SCC 41 (CanLII), paras. 21-33.

Lobbying's appointment is owed by the GIC only to opposition leaders.[86]

83. The Commissioner of Lobbying rules on actions of lobbyists, not parliamentarians, including actions alleged by the public to have violated the *Lobbying Act* or *Code*. The Commissioner exercises statutory, quasi-judicial, rule of law, and democracy protection, enforcement public duties and powers – not just for parliamentarians but for all Canadians – aimed at maintaining the integrity of relations between lobbyists, the Government and parliamentarians.

84. The office of the Commissioner of Lobbying was reviewing four petitions filed by the Appellant at the time of the appointment of the new Commissioner.[87] The Federal Court has decided that the Appellant has standing for judicial review of rulings of the Commissioner.[88]

85. As a result, the Appellant had a legitimate expectation that the GIC consult with opposition party leaders as required by ss. 4.1(1) of the *Lobbying Act* before appointing the Commissioner of Lobbying. The GIC owed the Appellant, and the public, a duty of procedural fairness.

6. The Court below erred in finding that the statutory power granted to the GIC to appoint the Ethics Commissioner prevailed over the common law duty of procedural fairness re: legitimate expectations and reasonable apprehension of bias

i) The Court below erred in finding that procedural fairness only owed to MPs

86. For the same reasons as set out above under Issue 4, the Court below erred in deciding that the common law duty of procedural fairness concerning the overall integrity of the appointment process of the Ethics Commissioner was only owed to opposition party leaders, and is not owed by the GIC also to Democracy Watch as a representative of the public or to the public overall.[89]

ii) Reasonable Apprehension of Bias and the *Conflict of Interest Act*

[86] *Democracy Watch v. Attorney General of Canada*, 2018 FC 1291, at paras. 109-112.
[87] Affidavit of Duff Conacher, paras. 17-22, 28-31, Exhibits R to W, DD, EE, Appeal Book, Vol. 5, pp. 562-563, 565-566.
[88] *Democracy Watch v. Canada (Attorney General)*, 2018 FC 388, at paras. 45-66.
[89] *Democracy Watch v. Attorney General of Canada*, 2018 FC 1290, at paras. 99-103.

87. The *Conflict of Interest Act* ("***CofI Act***") informs the common law of reasonable apprehension of bias. It was enacted in 2006 as part of the *Federal Accountability Act*, and came into force in 2007, and sets out a regime of conflict of interest rules for public office holders, including ministers of the Crown, ministerial staff and advisors and certain GIC appointees. It contained some new rules and some of the rules from the *Conflict of Interest and Post-Employment Code for Public Office Holders* issued by Prime Ministers from 1985 on ("***PM Code***" – which continues to exist under the title *Open and Accountable Government*).[90]

88. The *CofI Act* is remedial legislation. The *Interpretation Act* requires that the *Act* be "given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects."[91] This was the approach adopted by the Oliphant Commission that led it to conclude that "demanding" standards of conduct must be imposed on public office holders.[92] The objects in section 3 including avoidance and minimizing the possibility of conflicts of interest by legal and policy decision-makers in the government, and resolution of their conflicts "in the public interest." The objects are directly connected with the constitutional principles of rule of law and democracy.

89. The integrity measures in the *CofI Act* must be interpreted in light of the Supreme Court of Canada's judgment in *R. v. Hinchey*, which held that federal ethics rules are one of many statutes and codes that "regulate behaviour" of government officials "for the important goal of preserving the integrity of government" (para. 13). Justice L'Heureux-Dubé wrote for the majority that:

> "Suffice it to say that our democratic system would have great difficulty functioning efficiently if its integrity was constantly in question. … [T]he importance of preserving integrity in the government has arguably increased given the need to maintain the public's confidence in government in an age where it continues to play an ever increasing role in the quality of everyday people's lives."[93]

90. As L'Heureux-Dubé, J. also wrote in *Hinchey*: "The need to preserve the appearance of integrity..." requires that statutory provisions be interpreted so as to prohibit actions "...which can

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[90] Affidavit of Duff Conacher, para. 17, Exhibit M, Appeal Book, Vol. 2, pp. 236-247.
[91] *Interpretation Act*, R.S.C., 1985, c. I-21, section 12.
[92] Canada, *Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney*, 2010, Vol. 3, Policy and Consolidated Findings and Recommendations, pp. 484-486, (hereinafter, *Oliphant Commission*).
[93] *R. v. Hinchey*, [1996] 3 S.C.R. 1128, 1996 CanLII 157, at para. 14 (hereinafter *Hinchey*).

potentially compromise that appearance of integrity.".[94] That reasoning is equally applicable to government ethics statutes like the *CofI Act*. As Justice L'Heureux-Dubé also noted in *Hinchey*: "…given the heavy trust and responsibility taken on by the holding of a public office or employ, it is appropriate that government officials are correspondingly held to codes of conduct which, for an ordinary person, would be quite severe."[95]

91. Section 4 of the *CofI Act* defines a conflict of interest with reference to furthering "private interests," whether one's own or those of another. Nothing in the *CofI Act* restricts the definition of private interests to financial matters. Instead, subsection 2(1) only defines what a private interest is *not*, and none of the exemptions apply to the Ethics Commissioner appointment process. The Ethics Commissioner recently adopted the expansive view that the *CofI Act* covers "all types of interests…including financial, social and political interests."[96]

92. In contrast to the *CofI Act*, the *Conflict of Interest Code for Members of the House of Commons* ("*MP Code*") expressly defines furthering a private interest in financial terms.[97] The fact that Parliament did not enact provisions in the *CofI Act* to limit the concept of private interest to financial interests suggests that Parliament's intention was to cover all private interests.[98]

93. The broad language used in the *CofI Act* makes clear that it was all intended to apply to real and apparent conflicts. Among its purposes in section 3 are avoidance of "conflicts of interest" without any limiting language confining the *Act* to "real" conflicts. Subsection 6(1) prohibits participating in a decision when the "public office holder knows or reasonably should know that, in the making of the decision, he or she would be in a conflict of interest." [emphasis added]. In addition, subsection 11(1) of the *CofI Act* bans the acceptance of gifts etc. "that might reasonably be seen to have been given to influence the public office holder..." [emphasis added]

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[94] *Hinchey*, para. 16.
[95] *Hinchey*, para. 18.
[96] Conflict of Interest and Ethics Commissioner, *Trudeau II Report*, August 2019, paras. 290-291.
[97] House of Commons, *Standing Orders of the House of Commons, Appendix I, Conflict of Interest Code for Members of the House of Commons*, subsection 3(2).
[98] R. Sullivan, *Sullivan on the Construction of Statutes*, 6th Ed., Lexis-Nexis, 2014, p. 248. Under the implied exclusion rule of statutory interpretation, if a legislature "had meant to include a particular thing within its legislation, it would have referred to that thing expressly."

94. This Court has ruled unanimously that the phrase "a conflict of interest" means when a public office holder has "a real or seeming incompatibility between one's private interests and one's public or fiduciary duties" that "might reasonably be apprehended to give rise to a danger of actually influencing the exercise of a professional duty."[99] [emphasis added]

iii) The GIC was biased when appointing the Ethics Commissioner

95. The common law duty of procedural fairness has evolved such that it is applicable to every public authority that makes decisions that are not legislative in nature.[100]

96. The Supreme Court of Canada has stated public confidence in our legal system:

> is rooted in the fundamental belief that those who adjudicate in law must always do so without bias or prejudice and must be perceived to do so.[101]

97. Reasonable apprehension of bias was defined in the seminal Supreme Court of Canada judgment in *Committee for Justice and Liberty v. National Energy Board*:

> "... the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is 'what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."[102]

98. The process used by the GIC for making the legal decision to choose Mario Dion as the nominee for Ethics Commissioner created a reasonable apprehension of bias given that:

a. when the GIC chose Mr. Dion, it was known that he would inherit as Ethics Commissioner the ongoing investigations into the alleged violations of the *CofI Act* by the Prime Minister and Minister Morneau;
b. the Prime Minister chose Minister Chagger to oversee the appointment process knowing she had defended both the PM's and Minister Morneau's alleged actions;
c. all selection advisory committee members served and/or served at the GIC's pleasure;
d. all GIC members who participated in the decision serve at the PM's pleasure.

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[99] *Democracy Watch v. Campbell*, [2010] 2 F.C.R. 139, 2009 FCA 79, para. 49, quoting from *Cox v. College of Optometrists of Ontario* (1988), 65 O.R. (2d) 461 (Div. Ct.).
[100] *Dunsmuir v. New Brunswick*, 2008 SCC 9, paras. 87-90.
[101] *Wewaykum Indian Band v. Canada*, 2003 SCC 45, para. 57.
[102] *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 SCR 369 at p. 394, (hereinafter *Committee for Justice and Liberty*).

99. The Prime Minister and Minister Morneau had a clear, real private interest in the Ethics Commissioner's investigations and rulings. The Prime Minister admitted his real conflict of interest when he recused himself from participating in the Ethics Commissioner appointment process because the Commissioner was investigating him. For the same reason, Minister Morneau should have but did not recuse himself from the appointment decision. Given they serve at the pleasure of the Prime Minister, the other GIC members should also have recognized their conflict of interest and perceived bias, and ensured that the selection process was sufficiently independent from the GIC to avoid even the appearance of bias.

iv) The statute does not prevail over the appearance of bias because the appointment violated constitutional principle of administrative independence

100. If a decision or the process leading up to the issuance of the decision is tainted by a reasonable apprehension of bias, the appropriate remedy is to set aside or quash the decision. "The damage created by apprehension of bias cannot be remedied."[103]

101. The Court below erred in law by deciding that *PofC Act* subsection 81(1) "ousted" the common law principle of procedural fairness that includes the prohibition on the GIC making the Ethics Commissioner appointment because of the appearance of bias.[104] The Court erred by basing its finding on the Supreme Court of Canada's broad ruling in the 2001 case *Ocean Port* that a statute can override procedural fairness concerning an administrative tribunal because tribunals lack "constitutional distinction from the executive" as they are created "precisely for the purpose of implementing government policy" (the tribunal at issue in *Ocean Port* was a liquor licensing board) and do not "approach the constitutional role of the courts."[105]

102. Since *Ocean Port*, the courts have extended constitutional protection for judicial independence and established constitutional "administrative independence" requirements for tribunals that approach the role of the courts, as the Ethics Commissioner does. In *Ell v. Alberta*,

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[103] *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 SCR 623, at p. 645.
[104] *Democracy Watch v. Attorney General of Canada*, 2018 FC 1290, at paras. 124-129, esp. 128-129, citing *C.U.P.E. v. Ontario (Minister of Labour)*, [2003] 1 SCR 539, 2013 SCC 29, paras. 117-118 and 126 (hereinafter *C.U.P.E.*), which reference *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, [2001] 2 SCR 781, 2001 SCC 52 (CanLII), paras. 21, 22 and 27 (hereinafter *Ocean Port*).
[105] *Ocean Port*, paras. 24 and 33.

the Supreme Court extended some features of judicial independence to Justices of the Peace because they exercise "judicial functions that relate to the bases upon which the principle is founded.[106] In *Bell Canada*, the Court stated:

> Other tribunals, however, are closer to the judicial end of the spectrum: their primary purpose is to adjudicate disputes through some form of hearing. Tribunals at this end of the spectrum may possess court-like powers and procedures. These powers may bring with them stringent requirements of procedural fairness, including a higher requirement of independence…[107]

103. Extending parts of judicial independence protections to tribunals was recognized in 2006 by McEwan J. in *McKenzie*, a decision on the termination of a residential tenancy arbitrator:

> It now seems clear that essentially anything broadly labelled a "court" or with at least one foot within the "judicial branch" of government will attract constitutional protection.[108] [underlining in original]

104. Justice McEwan continued, and concluded:

> The power of legislatures to oust the principles of natural justice in the design of administrative tribunals must be rationally connected to the purpose and function of the tribunal.
>
> …
>
> The fundamental principles upon which justice and democracy rest must infuse both judge-made law and legislation. The rules of natural justice are drawn from a wellspring of fundamental principles. Any modification or ouster of those rules by legislatures must logically tap into the same sources in order to be constitutional. Legislation ousting the rules of natural justice must, in other words, still comport with the fundamental premises, written in some contexts, unwritten in others, infusing the concept of the rule of law.[109]

105. In a speech in 2012, Honourable Mr. Justice Louis LeBel expressed support for the constitutional principle of administrative independence while addressing the *Ocean Port* ruling in relation to "institutional independence in adjudicative tribunal settings." He stated:

> …given the importance of administrative justice, we should perhaps question whether administrative adjudicative administration [sic] should not be given a stronger constitutional

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[106] *Ell v. Alberta*, [2003] 1 S.C.R. 857, at para. 20, (hereinafter *Ell*), drawing from Lamer C.J.'s majority reasons in *Reference re: Provincial Court*.
[107] *Bell Canada v. Canadian Telephone Employees Association*, 2003 SCC 36, para. 21 (hereinafter *Bell Canada*).
[108] *McKenzie v. Minister of Public Safety and Solicitor General et al.*, 2006 BCSC 1372 (CanLII), para. 145.
[109] *McKenzie*, paras. 148 and 151.

> protection after all. Canadians will deal with administrative action and justice more often than with the civil or criminal courts in their daily life. [Emphasis added.]
> … The goal of strengthening the independence of administrative tribunals is not only to eliminate a reasonable apprehension of bias, but also to create a reasonable apprehension that the system works efficiently and transparently, while being accessible to every citizen. This requires a model for administrative justice that is independent, yet responsive to the particular demands of its unique environment.[110]

106. Most recently, the B.C. Court of Appeal held in *Walter*, after canvassing a full range of cases, that the independence required for a tribunal depends on whether it is "is a resolver of disputes, interpreter of the law, and defender of the Constitution" and whether its members are required to have judicial experience,[111] and that "the courts must adopt a flexible approach to the question of what constitutes procedural fairness in the administrative context."[112]

107. The basis for the protections of administrative tribunal independence from the executive and legislative branches mirror the "individual" and "institutional" aspects of the constitutional guarantee of judicial independence, given some tribunals, like the courts, "are not charged solely with the adjudication of individual cases" but also have "a second, different and equally important role, namely as protector of the Constitution and the fundamental values embodied in it – rule of law, fundamental justice, equality, preservation of the democratic process…"[113]

108. In *Reference re: Provincial Court*, Lamer C.J., writing for the majority, discussed the important relationship between the constitutional principle of judicial independence to the constitutional convention of separation of powers.[114] The separation of powers, he explained, "depoliticizes" the relationship between the branches, ensuring that the legislature and executive cannot, and cannot appear to, exert political pressure on the judiciary.

109. The Ethics Commissioner position fulfills all the criteria of a tribunal deserving a higher requirement of independence from the executive branch, with "constitutional constraints"

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[110] Hon. Justice Louis LeBel, "Notes for an Address: Reflections on Natural Justice and Procedural Fairness in Canadian Administrative Law," *Canadian Journal of Administrative Law & Practice* (February 2013: Scarborough), Vol. 26, Issue 1, 51 at 57.
[111] *Walter v. British Columbia*, 2019 BCCA 221, paras. 94-97 (hereinafter *Walter*).
[112] *Walter*, para. 110.
[113] *The Queen v. Beauregard*, [1986] 2 S.C.R. 56, paras. 23-24.
[114] *Ref re Remuneration of Judges of the Prov. Court of P.E.I.; Ref re Independence and Impartiality of Judges of the Prov. Court of P.E.I.*, [1997] 3 S.C.R 3 (hereinafter *Reference re: Provincial Court*), paras. 138-146.

applying to the GIC's relationship with the Commissioner, including to the appointment process. The independence of the Ethics Commissioner deserves this protection because the Commissioner:

a. is an adjudicator of disputes concerning alleged violations of the *CofI Act*;
b. is an interpreter of the law, and enforcer of the *CofI Act* which has the object of ensuring government integrity and public confidence in government, thereby making the Commissioner a defender of the constitutional principles of rule of law and democracy;
c. is required under ss. 81(2) of the *PofC Act* to be a judge or tribunal decision-maker;
d. has the court-like powers to subpoena witnesses to testify and produce evidence under ss. 48(1) and (2) of the *CofI Act*, with the offence of perjury applying (under clause 49(5)(b) of the *CofI Act*) to testimony provided to the Commissioner;
e. is required to use court-like procedures under section 46 of the *CofI Act*;
f. imposes orders in a court-like manner under sections 30 and 41 of the *CofI Act*;
g. imposes penalties in a court-like manner under sections 53 to 59 of the *CofI Act*;
h. makes public decisions under sections 44(8), 45(9) and 62 of the *CofI Act* that are protected by a strong privative clause in section 66 of the *CofI Act*, making the position effectively a court of last resort on government integrity.

110. In *MacBain*, this Court held that, concerning an administrative tribunal, the "offensive portion of the statutory scheme" was "the appointment of the Tribunal by the Commissioner since the Commission is also the prosecutor."[115] In this appeal, the offensive action is the appointment of the Ethics Commissioner by the GIC when members of the GIC were the defendants in cases of allegations of violations of the *CofI Act* which the appointee would have to adjudicate. The GIC chose its own judge.

111. In 2007, the Canadian Judicial Council cautioned on the dangers of judicial selection committees that lacked sufficient independence from the GIC, even though the GIC made the final judicial appointment decision:

> Because the majority of voting members are now appointed by the Minister, the advisory committees may neither be, nor seen to be, fully independent of the government. This puts in peril the concept of an independent body that advises the government on who is best qualified to be a judge. Judicial independence is not the private right of judges but the foundation of judicial impartiality and a constitutional right of all Canadians.[116]

112. In the situation at issue in this appeal, members of the selection committee for the Ethics Commissioner were chosen by, and served and/or served at the pleasure of, the GIC. This

[115] *MacBain v. Lederman*, [1985] 1 FC 856, 1985 CanLII 3160 (FCA), para. 38 (hereinafter *MacBain*).
[116] Affidavit of Duff Conacher, para. 51, Exhibit OO, Appeal Book, Vol. 2, pp. 350-359 at p. 356.

compounds the bias that tainted the GIC's appointment process, a bias the statute does not override given the constitutional protection due by law to the independence of the Commissioner position.

v) Democracy Watch had a legitimate expectation that the GIC would avoid an appearance of bias when appointing the Ethics Commissioner

113. Democracy Watch, as a representative of the public, has a legitimate expectation that the GIC would avoid an appearance of bias when appointing the Ethics Commissioner. This expectation is founded upon the objects, purposes and provisions of the *CofI Act* as well as the expectations created by the *PM Code*, both of which govern ethical conduct among public office holders. A party's legitimate expectations will entitle it to "more extensive procedural rights than would otherwise be accorded" by decision-makers.[117]

114. As noted by the Oliphant Commission, the *CofI Act* is "augmented" by the *PM Code*[118] which sets out standards of conduct for members of the GIC and their staff. Compliance with the *PM Code* by GIC members is a "term and condition of appointment" with members required to "certify that he or she will comply with these Guidelines."[119] The *PM Code* requires GIC members to "uphold the highest ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of the government are conserved and enhanced." The *PM Code* also states: "Ministers and Parliamentary Secretaries must <u>avoid</u> conflict of interest, the <u>appearance of conflict of interest</u> and <u>situations that have the potential</u> to involve conflict of interest"[120] [emphasis added] and requires them to act "in a manner that will bear the closest scrutiny, an obligation that is not fully discharged by simply acting within the law."[121]

115. Even as soft law, ethics codes like the *PM Code* have been recognized as crucial elements in the process of judicial scrutiny of decision-makers, particularly in limiting the exercise of discretionary power. They serve to "bridge law and policy."[122]

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[117] *Baker*, para. 26.
[118] *Oliphant Commission*, p. 473.
[119] Affidavit of Duff Conacher, para. 17, Exhibit M, Appeal Book, Vol. 2, p. 238.
[120] Affidavit of Duff Conacher, para. 13, Exhibit M, Appeal Book, Vol. 2, p. 244.
[121] Affidavit of Duff Conacher, para. 13, Exhibit M, Appeal Book, Vol. 2, p. 237.
[122] L. Sossin and C. W. Smith, "Hard Choices and Soft Law: Ethical Codes, Policy Guidelines and the Role of Courts in Regulating Government," *Alberta Law Review* 40, April 2003, pp. 867-893, at p. 892.

116. Taken together, the *CofI Act* and the *PM Code* create a legitimate expectation on the part of Democracy Watch and the public that the GIC would use a process in making the appointment of the Ethics Commissioner that avoided creating even an apparent conflict of interest, even a reasonable apprehension of bias. Any discretion GIC may have had in selecting the Ethics Commissioner is constrained by the objects and provisions of the *CofI Act*.[123]

vi) The doctrine of necessity does not prevail over the appearance of bias given the GIC could have easily used an appointment process that neutralized its bias

117. The Respondent contended before the Court below that the doctrine of necessity overrides the apprehension of bias on the part of the selection advisory committee and the GIC.[124] In contrast to the situation at issue in *Re Manitoba Language Rights*, [1985] 1 SCR 721, there was no state of emergency that required the GIC to appoint the Ethics Commissioner as it did. In fact, the GIC was appealed to in writing by the Conservative and the NDP leaders in June 2017, five months before it chose its nominee, to use a process involving representatives from all the parties, as the British Columbia legislature uses to appoint similar good-government watchdogs.[125]

118. In addition, the GIC had modified, and deployed, appointment processes for other legal decision-makers in order to neutralize its bias in the two years prior to its appointment of the Ethics Commissioner. The GIC modified the processes for appointing justices to federal and provincial courts and to the Supreme Court to ensure selection committees (administered by the Commissioner of Federal Judicial Affairs appointed under the *Judges Act*)[126] served fixed terms,[127] and produce short lists of candidates from which the GIC makes appointments.

119. The GIC also modified the selection processes for the new Commissioner of the Royal Canadian Mounted Police and for senators, with most, if not all, members on the selection committees having no connection to the GIC or the government, all members subject to conflict

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[123] *C.U.P.E.*, *supra* paras. 49, 94 and 184.
[124] *Democracy Watch v. Attorney General of Canada*, 2018 FC 1290, at para. 125.
[125] Appeal Book, Vol. 2, Affidavit of Duff Conacher, para. 55, Exhibits UU, VV.
[126] *Judges Act*, R.S.C., 1985, c. J-1, section 73.
[127] Canada, Office of the Commissioner for Federal Judicial Affairs, *Welcome to the Website of the Office of the Commissioner for Federal Judicial Affairs Canada*.

of interest requirements, and the committees sending a short list of candidates to the GIC.[128]

120. The GIC's conflict of interest and bias would have been effectively avoided if its only involvement in the selection of the new Ethics Commissioner had been to choose one person from a short list of qualified candidates that had been proposed by a selection committee that was sufficiently removed from the GIC. If the GIC had distanced itself in the same way it did from the search processes for the short list of qualified candidates for the positions of federal judges, the RCMP Commissioner, and senators, then its appearance of bias would not be at issue.

[128] Affidavit of Duff Conacher, paras. 52-53, Exhibits PP to SS, Appeal Book, Vol. 2, pp. 359-375.

7. The Court below erred in finding that the statutory power granted to the GIC to appoint the Commissioner of Lobbying prevailed over the common law duty of procedural fairness re: legitimate expectations and reasonable apprehensions of bias

i) The Court below erred in finding that procedural fairness only owed to MPs

121. For the same reasons as set out above under Issue 4 and Issue 5, the Court below erred in deciding that the duty of procedural fairness concerning the overall integrity of the appointment process of the Commissioner of Lobbying was only owed by the GIC to opposition party leaders, and not also to the Appellant as a representative of the public, and the public overall.

ii) The GIC was biased when appointing the Commissioner of Lobbying

122. The process used by the GIC for making the legal decision to choose Nancy Bélanger as Commissioner of Lobbying created a reasonable apprehension of bias given that:

a. when the GIC chose Ms. Bélanger, it was known that she would inherit as Commissioner ongoing investigations concerning situations involving the Prime Minister, Minister Morneau and Minister Freeland;
b. all members of the selection advisory committee served at the pleasure of the GIC, and;
c. the Prime Minister and the other two ministers participated in the decision, along with the other members of the GIC who all serve at the pleasure of the Prime Minister.

iii) The statute does not prevail over the appearance of bias given the appointment violated the constitutional principle of administrative independence

123. For all the same reasons set out above under Issue 6, section (iv), the Court below erred in law by deciding that *Lobbying Act* subsection 4.1(1) "ousted" the common law principle of procedural fairness that includes the prohibition on the GIC making the Commissioner of Lobbying appointment because of its appearance of bias.[129]

124. The Commissioner of Lobbying position fulfills all the criteria of a tribunal deserving a higher requirement of independence, with "constitutional constraints" applying to the GIC's relationship with the Commissioner, including to the appointment process. The independence of the Commissioner deserves this protection because the Commissioner:

[129] *Democracy Watch v. Attorney General of Canada*, 2018 FC 1291, at paras. 133 to 138, esp. paras. 137-138.

a. is the adjudicator of disputes concerning alleged violations of the *Lobbyists' Code*;
b. is an interpreter of the law, including the *Lobbying Act* and *Code* which have the object of ensuring government integrity and public confidence in government, making Commissioner a defender of the constitutional principles of rule of law and democracy;
c. has the court-like powers to subpoena witnesses to testify and produce evidence under ss. 10.4(2) of the *Lobbying Act*, with the offence of perjury applying (under ss. 10.4(4) of the *Act*) to testimony provided to the Commissioner;
d. is required to follow court-like procedures under ss. 10.4(5), and;
e. makes public decisions under subsection 10.5 of the *Lobbying Act*.

125. The GIC chose its own judge when its members were parties to ongoing adjudications by the Commissioner of Lobbying of alleged violations of the *Lobbying Act* and *Code*, and the appearance bias on the part of the PM and GIC in doing that is not overridden by the statute given the constitutional protection of the independence of the Commissioner position.

iv) Democracy Watch had a legitimate expectation that the GIC would avoid an appearance of bias when appointing the Commissioner of Lobbying

126. For the same reasons set out above in Issue 6, part (v), Democracy Watch and the public had a legitimate expectation that the GIC would use a process in making the appointment of the Commissioner of Lobbying that avoided creating even the appearance of bias.

v) The doctrine of necessity does not prevail over the appearance of bias as the GIC could have easily used an appointment process that neutralized its bias

127. For all the same reasons as set out above under Issue 6, section (vi), the doctrine of necessity cited by the Respondent in the Court below[130] does not apply to the appointment process of the Commissioner of Lobbying.

PART IV – ORDER SOUGHT

1. The Appellant seeks the following relief:
   a) An order allowing the Appeal;
   b) An order quashing appointments of Mario Dion as Ethics Commissioner, and Nancy

[130] *Democracy Watch v. Attorney General of Canada*, 2018 FC 1291, at para. 134.

Bélanger as Commissioner of Lobbying;

c) Directions to the GIC concerning a new appointment process;
d) Costs in the application before the Federal Court, and in appealing the latter's decision before this Honourable Court
e) In the event the appeal is dismissed, no costs be ordered against the Appellant in this Court or in the Federal Court given the public interest nature of the Appellant's position, and the pro bono legal services that are being provided to the Appellant; and
f) Such further and other relief as counsel may recommend and this Honourable Court may order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at Ottawa this th day of September, 2019.

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David Yazbeck

Counsel for the Appellant,
Democracy Watch

PART V – LIST OF AUTHORITIES

Legislation

Conflict of Interest Act, S.C. 2006, c. 9, subsection 2(1), section 3, section 4, section 5, subsection 6(1), subsection 11(1), section 21, subsection 25(1), section 66

Conflict of Interest Code for Members of the House of Commons, subsection 3(2), being Appendix I of the *Standing Orders of the House of Commons*

Constitution Act, 1867, 30 & 31 Vict, c 3, sections 11-13, sections 21-36, sections 37-52

Financial Administration Act, R.S.C., 1985, c. F-11, section 6

Interpretation Act, R.S.C., 1985, c. I-21, section 12

Judges Act, R.S.C., 1985, c. J-1, section 73

Lobbying Act, R.S.C., 1985, c. 44, (4th Supp), subsection 4.1(1), section 10.2, section 10.3, section 10.4, section 10.5

Lobbyists' Code of Conduct, Preamble, Principles, Rule 6, Rule 8, Rule 9

Parliament of Canada Act, R.S.C., 1985, c. P-1, section 81, section 86, section 87

Public Service Employment Act, (S.C. 2003, c. 22, ss. 12, 13), section 127.1, section 128.

Jurisprudence

Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 SCR 817

Bell Canada v. Canadian Telephone Employees Association, 2003 SCC 36

Bezaire v. Windsor Roman Catholic Separate School Board, 1992 CanLII 7675 (ON SC)

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C.U.P.E. v. Ontario (Minister of Labour), [2003] 1 SCR 539, 2013 SCC 29

Democracy Watch v. Campbell, [2010] 2 F.C.R. 139, 2009 FCA 79

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McKenzie v. Minister of Public Safety and Solicitor General et al., 2006 BCSC 1372 (CanLII)

Mount Sinai Hospital Center v. Quebec (Minister of Health and Social Services), [2001] 2 SCR 281, 2001 SCC 41 (CanLII)

Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities), [1992] 1 SCR 623

Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch), [2001] 2 SCR 781, 2001 SCC 52 (CanLII)

Old St. Boniface Residents Association Inc. v. Winnipeg (City), [1990] 3 S.C.R. 1170

The Queen v. Beauregard, [1986] 2 S.C.R. 56

R. v. Hinchey, [1996] 3 S.C.R. 1128

Re Manitoba Language Rights, [1985] 1 SCR 721

Ref re Remuneration of Judges of the Prov. Court of P.E.I.; Ref re Independence and Impartiality of Judges of the Prov. Court of P.E.I., [1997] 3 S.C.R 3

Reference Re Senate Reform, 2014 SCC 32

TELUS Communications Inc. v. Wellman, 2019 SCC 19

Walter v. British Columbia, 2019 BCCA 221

Wenham v. Canada (Attorney Genera), 2018 FCA 199

Wewaykum Indian Band v. Canada, [2003] S.C.J. No. 50

Other Authorities

Canada, *Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney*, 2010, Vol. 3, Policy and Consolidated Findings and Recommendations, pp. 464 to 486.

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