

Court File No.: 548/19

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Divisional Court)**

BETWEEN:

DEMOCRACY WATCH

Applicant

- and -

ONTARIO INTEGRITY COMMISSIONER

Respondent

**FACTUM OF THE APPLICANT**

**LERNERS** LLP  
130 Adelaide Street West  
Suite 2400  
Toronto, ON M5H 3P5

**Rebecca Shoom** LS#: 68578G  
rshoom@lerners.ca  
Tel: 416.601.2382  
Fax: 416.601.4185

Lawyers for the Applicant

TO: **STOCKWOODS** LLP  
Toronto-Dominion Centre  
TD North Tower, Box 140  
77 King Street West, Suite 4130  
Toronto ON M5K 1H1

**Justin Safayeni** LS#: 58427U  
justins@stockwoods.ca  
Tel: 416.593.3494

**Stephen Aylward** LS#: 66556E  
stephena@stockwoods.ca  
Tel: 416.593.2496

Tel: 416.593.7200 / Fax: 416.593.9345

Lawyers for the Respondent

AND TO: **ATTORNEY GENERAL OF ONTARIO**  
Crown Law Office – Civil  
720 Bay Street  
8th Floor  
Toronto, Ontario M7A 2S9

**Victoria Yankou**  
Victoria.Yankou@ontario.ca  
Tel: 437.993.1616

## TABLE OF CONTENTS

	PAGE
PART I - INTRODUCTION .....	1
PART II - THE FACTS.....	2
A. The Office of the Integrity Commissioner of Ontario .....	2
B. The Role of the Ethics Executive .....	3
C. The March 2019 Report .....	4
D. Correspondence with the Integrity Commissioner and the Conflict of Interest Commissioner.....	5
PART III - ISSUES AND THE LAW .....	7
A. The Applicant should be granted public interest standing to bring this application .....	7
i. Serious justiciable issue .....	8
ii. Real stake or genuine interest.....	8
iii. Reasonable and effective way to bring the issue before the courts..	10
B. The applicable standard of review is correctness .....	12
C. The Integrity Commissioner made inquiries with respect to the relevant public officials, and is therefore mandated to issue determinations respecting their conduct.....	14
D. In the alternative, the Integrity Commissioner has exercised his discretion unreasonably in refusing to make inquiries into the Individuals' conduct.....	22
E. If the Integrity Commissioner is required to issue determinations, those determinations must be public.....	27
PART IV - ORDER REQUESTED.....	30
SCHEDULE "A" - LIST OF AUTHORITIES .....	32
SCHEDULE "B" - RELEVANT STATUTES .....	33
APPENDIX A.....	42

## **PART I - INTRODUCTION**

1. Integrity, accountability and transparency are cornerstones of a functional democratic society. In order to maintain public confidence in public officials, it is crucial that there exist a transparent structure to hold those officials accountable in the event of actual or potential violations of their ethical obligations.

2. This is a key aspect of the *Public Service of Ontario Act, 2006*, pursuant to which “ethics executives” are tasked with investigating and making determinations on whether public officials have acted in a conflict of interest. Where an ethics executive has made inquiries into conduct that raises concerns that a conflict of interest rule may have been contravened, the ethics executive is mandated to issue a determination of the result of those inquiries. Such a determination must be public to effectively hold public officials accountable to the public, thereby fulfilling the purpose and objects of the statutory structure.

3. The central issue in this application is whether the Integrity Commissioner of Ontario, acting in his role as ethics executive, made inquiries in respect of the conduct of former and current public officials Dean French, Steve Orsini, Derek O’Toole and Greg Harrington; in particular, whether they gave preferential treatment in the context of certain recruitment processes, in violation of their ethical obligations. Democracy Watch submits that such inquiries were made in the context of an investigation initially targeted at the Premier of Ontario, Doug Ford, with the result that the Integrity Commissioner is mandated to issue public determinations as to whether the individuals subject to those inquiries acted in a conflict of interest. The Integrity Commissioner takes the position that he has not made such inquiries, and consequently is not required to make determinations as to whether these individuals acted in a conflict of interest.

4. In the alternative, if the Court determines that inquiries have not been made, Democracy Watch submits that the Integrity Commissioner improperly exercised his discretion in deciding

not to make inquiries in the circumstances. The Integrity Commissioner has repeatedly rejected Democracy Watch's concerns respecting the public officials at issue, citing ever-changing rationales which are unsupported by the text and objects of the statute granting his discretion. This has resulted in an opaque process, with total obfuscation of how the Integrity Commissioner is carrying out his mandate as ethics executive (or whether he is carrying it out at all).

5. The Integrity Commissioner's approach to the issues in this application is marked by a lack of transparency, fails to hold public officials accountable for their conduct, and damages public confidence in the integrity of its provincial government, contrary to the express purposes of the governing legislation and the fundamental tenets of democracy. Democracy Watch seeks the Court's assistance in remedying this conduct by ordering the Integrity Commissioner to investigate and issue public determinations in respect of the ethical conduct of Dean French, Steve Orsini, Derek O'Toole and Greg Harrington.

## **PART II - THE FACTS**

### **A. The Office of the Integrity Commissioner of Ontario**

6. Ontario's Office of the Integrity Commissioner of Ontario ("OICO") is independent of government, and was established to maintain high standards of ethical conduct in the Ontario government. OICO describes itself as "an independent ethics leader, working to encourage and support high ethical standards that strengthen trust and confidence in the Ontario government".<sup>1</sup>

7. The Integrity Commissioner of Ontario is appointed pursuant to the *Members' Integrity Act, 1994* ("MIA").<sup>2</sup> The role of Integrity Commissioner of Ontario is currently filled by The

---

<sup>1</sup> "About the Office", OICO website, as visited on December 12, 2019, AR, tab 2D, p. 25.

<sup>2</sup> *Members' Integrity Act, 1994*, SO 1994, c 38, s 23 [*MIA*].

Honourable J. David Wake (the "Integrity Commissioner").

## **B. The Role of the Ethics Executive**

8. Pursuant to the *Public Service of Ontario Act, 2006* ("PSOA"), every current and former public servant has an ethics executive.<sup>3</sup> Ethics executives are responsible for, among other things, conducting inquiries where public servants may have contravened a conflict of interest rule, making determinations on conflict of interest issues, and providing directions where an actual or potential conflict of interest is found.<sup>4</sup>

9. Ethics executives are required by statute to "promote ethical conduct by public servants".<sup>5</sup>

10. The Integrity Commissioner serves as the ethics executive for Ministers' staff, chairs of public bodies, former deputy ministers, Secretary of the Cabinet, former Cabinet Secretaries, and former public body employees and appointees.<sup>6</sup>

11. The ethics executive may make inquiries "as he or she considers appropriate" where there exist concerns that a conflict of interest rule has been or is about to be contravened by a public servant or former public servant:

**65** (4) The ethics executive may make such inquiries as he or she considers appropriate in response to a request, a notification or where the ethics executive has concerns that a conflict of interest rule has been or is about to be contravened by a public servant or former public servant.<sup>7</sup>

The *PSOA* provides no definition or guidance with respect to what constitutes an "inquiry" within the meaning of this provision.

12. Where such inquiries have been made, the ethics executive is mandated to issue a

---

<sup>3</sup> *Public Service of Ontario Act, 2006*, SO 2006, c 35, Sch A, ss 62-63 [**PSOA**].

<sup>4</sup> "Ethics Executives", OICO website, as visited on December 12, 2019, AR, tab 2E, p. 28; *PSOA*, s 65(4).

<sup>5</sup> *PSOA*, s 64.

<sup>6</sup> "Ethics Executives", OICO website, as visited on December 12, 2019, AR, tab 2E, p. 28.

<sup>7</sup> *PSOA*, s 65(4).

“determination” with respect to the subject of the inquiries:

**65** (5) An ethics executive shall,

- (a) make a determination with respect to any matter that is brought to the attention of the ethics executive under subsections (1) to (3) or that is the subject of inquiry under subsection (4);<sup>8</sup>

**C. The March 2019 Report**

13. On or about March 20, 2019, the Integrity Commissioner released a report arising out of requests for his opinion in respect of Doug Ford, the Premier of Ontario (the "Premier"), and alleged conflicts of interest on the part of the Premier in the appointment of Ron Taverner ("Taverner") as Commissioner of the Ontario Provincial Police (the "Report").<sup>9</sup> The requests giving rise to the Report were submitted by Kevin Yarde, the Member of Provincial Parliament for Brampton North, and John Fraser, the Member of Provincial Parliament for Ottawa South, pursuant to s. 30 of the *MIA*:

**30** (1) A member of the Assembly who has reasonable and probable grounds to believe that another member has contravened this Act or Ontario parliamentary convention may request that the Commissioner give an opinion as to the matter.<sup>10</sup>

14. The Report, which is ~100 pages long, states that it is based on investigations that included, among other things, interviews of 21 witnesses and review of over 3,500 documents. Witnesses interviewed included, among others, Dean French ("French"), former Chief of Staff to the Premier, Derek O'Toole ("O'Toole"), Senior Policy Advisor to the Premier's Chief of Staff, Greg Harrington ("Harrington"), former Policy Advisor to French, and Steve Orsini ("Orsini"), former Secretary to the Ontario Cabinet.

15. In the Report, the Integrity Commissioner concluded that the Premier did not breach any sections of the *MIA*. However, the Integrity Commissioner found that the process used for

---

<sup>8</sup> *PSOA*, s 65(5)(a).

<sup>9</sup> Report, AR, tab 2F, pp. 30-131.

<sup>10</sup> *MIA*, s 30.

Taverner's recruitment had "some troubling aspects" and was "flawed". To that, the Report contains factual findings indicating that:

- (a) French, Orsini, O'Toole and Harrington provided preferential treatment to Taverner throughout the appointment process for the Commissioner of the Ontario Provincial Police;
- (b) French and Orsini provided preferential treatment to Mario Di Tommaso ("Di Tommaso"), the Deputy Minister of Community Safety, by considering only him for the position of Deputy Minister of Community Safety; and
- (c) French provided preferential treatment to Chris Froggatt ("Froggatt"), former vice-chair of the Premier's election campaign and thereafter a member of the Premier's transition team, by connecting him with Taverner for the purpose of providing communications advice and assistance.

A chart containing examples of such factual findings and evidence is attached as Appendix A.

**D. Correspondence with the Integrity Commissioner and the Conflict of Interest Commissioner**

16. On March 25, 2019, Democracy Watch sent a letter to Sidney Linden, then the Conflict of Interest Commissioner (the "Conflict Commissioner"), and the Integrity Commissioner, requesting:

- (a) That the Integrity Commissioner investigate, and issue a public ruling, with respect to the conduct of French, O'Toole, and Harrington; and
- (b) That the Conflict Commissioner investigate, and issue a public ruling, with respect to the conduct of Orsini.<sup>11</sup>

17. On March 28, 2019, the Conflict Commissioner refused Democracy Watch's request with respect to Orsini, stating that "the [*Public Service of Ontario Act, 2006*] and the *Freedom of Information and Protection of Privacy Act* limit the type of information that this office may disclose." He did not refer to any particular provision(s) of the *Freedom of Information and*

---

<sup>11</sup> Letter from Duff Conacher to Sidney Linden and The Honourable J. David Wake dated March 25, 2019, AR, tab 2G, pp. 133-139. The letter was sent to both the Conflict Commissioner and the Integrity Commissioner because, at the time, they each were the ethics executive for particular positions of public office. The Conflict Commissioner oversaw Orsini, while the Integrity Commissioner oversaw French, O'Toole and Harrington. As noted below, this structure changed in May 2019, when the Office of the Integrity Commissioner merged with the Office of the Conflict of Interest Commissioner.

*Protection of Privacy Act* (“*FIPPA*”) in his response.<sup>12</sup>

18. The Integrity Commissioner similarly refused Democracy Watch’s request on April 11, 2019. He acknowledged that no provision of the *PSOA* prohibits the Integrity Commissioner from making a determination public, but went on to state that, “given the employment relationship between public servants and the government”, he “[does] not think that it would be appropriate for any determinations [he makes] to public servants as their Ethics Executive to be made public”.<sup>13</sup>

19. On May 1, 2019, the Office of the Integrity Commissioner merged with the Office of the Conflict of Interest Commissioner. As a result of this merger, as of May 1, 2019, the Integrity Commissioner assumed the duties of the Conflict Commissioner.<sup>14</sup>

20. Subsequently, in a September 30, 2019 letter, Democracy Watch sought clarification of the basis for the denials of its March 25, 2019 requests.<sup>15</sup> Instead of providing any clarification or additional information, the Integrity Commissioner responded that his position was unchanged from that in his April 11, 2019 letter, and repeated the explanation he had previously provided. He did not make any reference to *FIPPA*, or otherwise provide any clarification in respect of the position that had been expressed by the Conflict Commissioner in March 2019.<sup>16</sup>

21. Throughout this period of exchanged correspondence, at no time had the Conflict Commissioner or Integrity Commissioner stated whether any determinations had been made, or whether it considered that any investigations had been completed, with respect to French,

---

<sup>12</sup> Letter from Sidney Linden to Duff Conacher dated March 28, 2019, AR, tab 2L, p. 165.

<sup>13</sup> Letter from The Honourable J. David Wake to Duff Conacher dated April 11, 2019, AR, tab 2M, pp. 167-168.

<sup>14</sup> Press release, “Office of the Integrity Commissioner Merges with the Office of the Conflict of Interest Commissioner, 1 May 2019, AR, tab 2N, pp. 170-171.

<sup>15</sup> Letter from Duff Conacher to The Honourable J. David Wake dated September 30, 2019, AR, tab 2O, pp. 173-175.

<sup>16</sup> Letter from The Honourable J. David Wake to Duff Conacher dated October 1, 2019, AR, tab 2P, p. 177.

O'Toole, Harrington or Orsini. After this application was commenced, the Integrity Commissioner, through counsel, took the position that he had exercised his discretion and not made any inquiries with respect to these individuals, and that no determinations had been made.<sup>17</sup>

### **PART III - ISSUES AND THE LAW**

22. There are three substantive issues to be determined in this application:

- (a) Has the Integrity Commissioner conducted inquiries in respect of French, Orsini, O'Toole or Harrington, such that he is now required to issue determinations regarding their conduct?
- (b) If not, has the Integrity Commissioner properly exercised his discretion in refusing to conduct such inquiries?
- (c) If the Integrity Commissioner is required to issue determinations in respect of the conduct of French, Orsini, O'Toole and Harrington, need those determinations be made public?

23. There are also two preliminary issues to be determined:

- (a) Whether the Applicant should be granted public interest standing; and
- (b) The applicable standard of review.

#### **A. The Applicant should be granted public interest standing to bring this application**

24. Democracy Watch seeks public interest standing to bring this application.

25. In exercising its discretion to grant public interest standing, the court must consider three factors:

- (a) whether there is a serious justiciable issue raised;
- (b) whether the plaintiff (or applicant) has a real stake or a genuine interest in it; and
- (c) whether, in all the circumstances, the proposed suit is a reasonable and effective

---

<sup>17</sup> Letter from Justin Safayeni to Rebecca Shoom dated November 13, 2019, AR, tab 2S, pp. 193-194; Letter from Justin Safayeni to Rebecca Shoom dated January 15, 2020, Respondent's Application Record ("RAR"), tab 1E, pp. 17-18.

way to bring the issue before the courts.<sup>18</sup>

26. These factors are to be applied purposively and flexibly.<sup>19</sup>

27. All three of these factors favour granting public interest standing to Democracy Watch.

**i. Serious justiciable issue**

28. This factor involves two requirements: justiciability and seriousness. The justiciability of an issue is linked to the “concern about the proper role of the courts and their constitutional relationship to the other branches of government”, such that courts can ensure their exercise of discretion is consistent with the court staying within the bounds of its proper constitutional role.<sup>20</sup> A “serious issue” will exist where the question raised is a “substantial constitutional issue” or an “important one”, and the claim is “far from frivolous” on preliminary examination.<sup>21</sup>

29. There is no question that this application raises serious, justiciable issues. The issues raised involve important questions concerning the transparency of quasi-judicial processes and the accountability of public officials, which values are essential to a functioning democracy.<sup>22</sup> Underlying these issues, in the context of this case, are the conflict of interest ethics rules that affect every public office holder in the provincial sphere. These issues are well-suited to being determined by this Court in the context of a judicial review.

**ii. Real stake or genuine interest**

30. With respect to the second factor, the applicant must have a “genuine interest,” a “real stake” in the proceedings, or be otherwise “engaged with the issues” raised by the application.

This is determined by weighing whether the applicant has a “real and continued interest” in the

---

<sup>18</sup> *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, at para 37 [**Downtown Eastside**].

<sup>19</sup> *Downtown Eastside*, at para 37.

<sup>20</sup> *Downtown Eastside*, at paras 39-40.

<sup>21</sup> *Downtown Eastside*, at para 42.

<sup>22</sup> See, for example, *Canada (Information Commissioner) v Canada (Minister of National Defence)*, 2011 SCC 25 at para 80.

issue, or if it is simply a “mere busybody”. Other relevant factors in recognizing a genuine interest include the applicant’s experience and expertise, and whether its involvement in the issue makes it an appropriate body to bring the case in the public interest.<sup>23</sup>

31. Democracy Watch fulfills this requirement. Democracy Watch is an independent organization whose purpose is centred on government accountability, including transparent and accountable enforcement of Canada’s ethics rules.<sup>24</sup> It actively participates in public policy-making and legislative processes in matters relating to government ethics rules and other areas of democratic reform and government accountability.<sup>25</sup> It regularly participates in judicial proceedings engaging these topics, including being granted intervener status before the Supreme Court of Canada and initiating proceedings with respect to the independence and rulings of federal and provincial ethics bodies.<sup>26</sup> It engages in advocacy on a national scale, including organizing a “Government Ethics Coalition” focused on strengthening and enforcing government ethics rules.<sup>27</sup> In short, it is not a “mere busybody”: it has a real stake in the proceeding, as demonstrated by its strong “track record” and “degree of involvement” with the matters at issue.<sup>28</sup> Indeed, prior to bringing this application, Democracy Watch sought to complain directly to the Integrity Commissioner about the conduct of the Premier’s staff.<sup>29</sup> Democracy Watch’s considerable experience, expertise, and ongoing active participation in the issues make it an appropriate body to bring this application in the public interest.

---

<sup>23</sup> *Downtown Eastside*, at para 43.

<sup>24</sup> Affidavit of Duff Conacher sworn December 17, 2019 (“Conacher Affidavit”) at paras 2-3, AR, tab 2, pp. 10-11.

<sup>25</sup> Conacher Affidavit at para 4, Exh B, AR, tabs 2, 2B, pp. 11, 21.

<sup>26</sup> Conacher Affidavit at para 5, Exh C, AR, tab 2, 2C, pp. 11, 23.

<sup>27</sup> Conacher Affidavit at para 6, AR, tab 2, p. 11.

<sup>28</sup> *Sierra Club of Canada v Canada (Minister of Finance)*, 1998 CanLII 9124 (FC)

<sup>29</sup> Letter from Duff Conacher to the The Honourable J. David Wake and Sidney Linden dated March 25, 2019, AR, tab 2G, pp. 133-139.

**iii. Reasonable and effective way to bring the issue before the courts**

32. The third factor in the public interest standing analysis, “whether the proposed suit is, in all of the circumstances, a reasonable and effective means of bringing the matter before the court”, is closely linked to the principle of legality, as courts should consider whether granting standing is desirable from the point of view of ensuring lawful action by government actors.<sup>30</sup> Courts must take a flexible and purposive approach to this factor, considering 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 action to go forward will serve the purpose of upholding the principle of legality.<sup>31</sup>

33. Of particular note, public interest standing generally will be granted where individual litigants or those most directly affected by the applicable scheme are not reasonably likely to bring an issue before the Court. For example, in *Nova Scotia Board of Censors v McNeil*, where the constitutionality of the legislative scheme empowering a provincial board to permit or prohibit the showing of films to the public was at issue, public interest standing was granted to the plaintiff, a member of the public, though others were more directly affected by the regulatory scheme, on the basis that the plaintiff had a different interest and “there appears to be no other way, practically speaking, to subject the challenged Act to judicial review”.<sup>32</sup>

34. The same can be said in respect of this application. This application is not only a reasonable and effective way for these issues to be determined – it is the *only* way. The people directly affected by the scheme of the *PSOA* are the public officials who are subject to the oversight of the Integrity Commissioner and ethics executives. Those directly affected by the Integrity Commissioner’s decision not to further investigate and issue determinations are the

---

<sup>30</sup> *Downtown Eastside*, at para 49.

<sup>31</sup> *Downtown Eastside*, at para 50.

<sup>32</sup> *Nova Scotia Board of Censors v McNeil*, 1975 CanLII 14 at pp. 270-271 (SCC). See also *Downtown Eastside*, at para 47.

individuals who would be the subjects of those determinations – French, Orsini, Harrington and O’Toole. Those individuals only benefit from the Integrity Commissioner’s decision and would have no incentive to challenge his approach to the issues, given that further investigation and issuance of a determination by the Integrity Commissioner would have the potential result of a public finding that they breached their conflict of interest obligations. There is no private litigant who reasonably would or could bring this challenge. The only way for these issues to be determined is through judicial proceedings brought by organizations like Democracy Watch, whose interest is in seeing the *PSOA* enforced in the public interest. The Integrity Commissioner plays a key role in government integrity, and it cannot be that his exercise of his statutory mandate is not reviewable by the courts.

35. Additionally, there is no other way for Democracy Watch to raise the concerns at issue in this application. Democracy Watch has already sought to raise these concerns with the Integrity Commissioner directly, to no avail; the Integrity Commissioner has refused to address them, based on what Democracy Watch contends are improper considerations.<sup>33</sup> This application for judicial review is the only remaining option. In this sense, this application differs from *Democracy Watch v Conflict of Interest and Ethics Commissioner*, a judicial review application in Federal Court arising out of the Conflict of Interest and Ethics Commissioner’s denial of Democracy Watch’s request for an investigation and ruling regarding participation in decisions by then Prime Minister Stephen Harper. In that case, the statute at issue specifically set out the route that a member of the public should take if it wanted to present information to the Commissioner, which route did not involve application to court.<sup>34</sup>

---

<sup>33</sup> Letter from Duff Conacher to Sidney Linden and The Honourable J. David Wake dated March 25, 2019, AR, tab 2G, pp. 133-139; Letter from Sidney Linden to Duff Conacher dated March 28, 2019, AR, tab 2L, p. 165; Letter from The Honourable J. David Wake to Duff Conacher dated April 11, 2019, AR, tab 2M, pp. 167-168.

<sup>34</sup> *Democracy Watch v Conflict of Interest and Ethics Commissioner*, 2009 FCA 15 at para 11.

36. Given the Integrity Commissioner's responses to date, this application is the only way for the issues raised to be determined. As such, public interest standing should be granted to Democracy Watch.

**B. The applicable standard of review is correctness**

37. Democracy Watch submits that the appropriate standard of review for these questions is correctness, and that the Integrity Commissioner's decisions are incorrect. In the alternative, if a reasonableness standard applies, the Integrity Commissioner has failed to act reasonably.

38. The Supreme Court of Canada recently revised the standard of review analysis in *Canada (Minister of Citizenship and Immigration) v Vavilov*.<sup>35</sup> Under the new framework, reasonableness is the presumptive standard of review. That presumption is rebutted, and a correctness standard is applied, where (a) the legislature has indicated that it intends a different standard or set of standards to apply, or (b) the rule of law requires that the standard of correctness be applied.<sup>36</sup>

39. With respect to (b), the rule of law will require courts to apply a correctness standard for constitutional questions, general questions of law of central importance to the legal system as a whole and questions regarding the jurisdictional boundaries between two or more administrative bodies. This “ensures that courts are able to provide the last word on questions for which the rule of law requires consistency and for which a final and determinate answer is necessary”,<sup>37</sup> to “resolve general questions of law that are of ‘fundamental importance and broad applicability’, with significant legal consequences for the justice system as a whole or for other institutions of government”.<sup>38</sup> General questions of law that previously have been held to

---

<sup>35</sup> *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [**Vavilov**].

<sup>36</sup> *Vavilov*, at paras 16-17.

<sup>37</sup> *Vavilov*, at para 53.

<sup>38</sup> *Vavilov*, at para 59.

be of central importance to the legal system as a whole include when an administrative proceeding will be barred by the doctrines of *res judicata* and abuse of process, the scope of the state's duty of religious neutrality, the appropriateness of limits on solicitor-client privilege, and the scope of parliamentary privilege.<sup>39</sup>

40. This application raises questions of law of central importance to the legal system as a whole. It engages issues of transparency of quasi-judicial processes and government accountability to the public, and how those principles manifest in the context of the *PSOA*'s scheme for the promotion and enforcement of ethics among public officials. The resolution of the issues in this application has fundamental importance, broad applicability, and fundamental consequences in respect of how the Integrity Commissioner, and other ethics executives, fulfill their statutory mandate. It is crucial for these bodies to be correct in their interpretation and application of the relevant statutory provisions.

41. In the alternative, even if the presumption of a reasonableness standard is not rebutted in this application, the Integrity Commissioner's decisions are not reasonable.

42. Application of the reasonableness standard is a robust form of review; it is not a "rubber-stamping" process or a means of sheltering decision-makers from accountability.<sup>40</sup> It requires decision-makers to "demonstrate that their exercise of delegated public power can be 'justified to citizens in terms of rationality and fairness'".<sup>41</sup> The standard is to be applied as follows:

*In conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified. What distinguishes reasonableness review from correctness review is that the court conducting a reasonableness review must focus on the decision the administrative decision maker*

---

<sup>39</sup> *Vavilov*, at para 60.

<sup>40</sup> *Vavilov*, at para 13.

<sup>41</sup> *Vavilov*, at para 14.

*actually made, including the justification offered for it, and not on the conclusion the court itself would have reached in the administrative decision maker's place.*<sup>42</sup>

43. The focus of the reasonableness review is on the decision actually made, including both the decision-maker's reasoning process and the outcome. The court's role is to review, rather than to decide the issue itself.<sup>43</sup>

44. While the reviewing court is to be sensitive to the administrative setting in which the issue was decided, the exercise of public power must be justified, intelligible and transparent.<sup>44</sup> Further, the court must not buttress a decision where there exists a fundamental gap in the rationale for a decision:

*Where, even if the reasons given by an administrative decision maker for a decision are read with sensitivity to the institutional setting and in light of the record, they contain a fundamental gap or reveal that the decision is based on an unreasonable chain of analysis, it is not ordinarily appropriate for the reviewing court to fashion its own reasons in order to buttress the administrative decision. Even if the outcome of the decision could be reasonable under different circumstances, it is not open to a reviewing court to disregard the flawed basis for a decision and substitute its own justification for the outcome...*<sup>45</sup>

45. A decision will be unreasonable where there is a "failure of rationality internal to the reasoning process", or "when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it".<sup>46</sup>

46. For the reasons detailed below, the Integrity Commissioner's decisions are neither correct nor reasonable.

**C. The Integrity Commissioner made inquiries with respect to the relevant public officials, and is therefore mandated to issue determinations respecting their conduct**

47. As noted above, s. 65(4) of the *PSOA* provides that an ethics executive "may make such

---

<sup>42</sup> *Vavilov*, at para 15.

<sup>43</sup> *Vavilov*, at para 83.

<sup>44</sup> *Vavilov*, at para 95.

<sup>45</sup> *Vavilov*, at para 96.

<sup>46</sup> *Vavilov*, at para 101.

inquiries as he or she considers appropriate” arising out of a request, notification, or concerns that a conflict of interest rule has been or is about to be contravened by a current or former public servant.<sup>47</sup> Pursuant to s. 65(5)(a), where such inquiries have been made, the ethics executive “shall [...] make a determination with respect to any matter that is [...] the subject of inquiry”.<sup>48</sup>

48. The Integrity Commissioner takes the position that he has made no inquiries with respect to the conduct of any of French, Orsini, O’Toole or Harrington.<sup>49</sup> A review of the March 2019 Report, in the context of a proper interpretation of the applicable legislation, demonstrates that this is not so. In fact, the Integrity Commissioner has made inquiries with respect to all four of these individuals, such that he is now mandated to issue determinations respecting their conduct.

49. In interpreting a statute, the following principles apply:

(a) Words are to be read “in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament”.<sup>50</sup>

(b) Statutory interpretation is not to be founded on words alone. The text “must be read and analyzed in light of a purposive analysis, a scheme analysis, the larger context in which the legislation was written and operates, and the intention of the legislature, which includes implied intention and the presumptions of legislative intent.”<sup>51</sup>

(c) The text must be read harmoniously with the scheme and object of the statute. Contradictions or inconsistencies among parts of the same body of legislation should be avoided.<sup>52</sup>

(d) A statute is to be given “such fair, large and liberal interpretation as best ensures

---

<sup>47</sup> *PSOA*, s 65(4).

<sup>48</sup> *PSOA*, s 65(5).

<sup>49</sup> Letter from Justin Safayeni to Rebecca Shoom dated November 13, 2019, AR, tab 2S, p. 193.

<sup>50</sup> *Oakville (Town) v Clublink Corporation ULC*, 2019 ONCA 826 at para 37, citing E.A. Driedger, *Construction of Statutes*, 2d ed (Toronto: Butterworths, 1983), at p. 87. [**ClubLink**]

<sup>51</sup> *Clublink*, at para 38, citing Ruth Sullivan, *Statutory Interpretation*, 3d ed (Toronto: Irwin Law, 2016) at p. 46.

<sup>52</sup> *Clublink*, at para 45; *Peel (Police) v Ontario (Special Investigations Unit)*, 2012 ONCA 292 at para 26, citing Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed (Markham, Ont: LexisNexis, 2008) at p. 223.

the attainment of its objects”.<sup>53</sup>

50. Sections 65(4)-(5) of the *PSOA*, on their face, create a two-phase scheme. The first phase, under s. 65(4), is permissive and discretionary: an ethics executive **may** make inquiries as considered appropriate in certain circumstances. There are three such circumstances: (1) where a “request” is received, (2) where a “notification” is received, or (3) “where the ethics executive has concerns that a conflict of interest rule has been or is about to be contravened”. The first circumstance, relating to a “request”, links to ss. 65(1)-(2) of the *PSOA*, pursuant to which a current or former public servant, or a supervisor of a public servant, may “request” that his or her ethics executive determine a question about the application of conflict of interest rules. The second circumstance, relating to a “notification”, links to s. 65(3) of the *PSOA*, pursuant to which a current or former public servant must “notify” his or her ethics executive or any personal or pecuniary interests that could raise an issue under applicable conflict of interest rules. The third circumstance is more general, permitting the ethics executive to make appropriate inquiries where there are concerns about contravention of conflict of interest rules.

51. The second phase, under s. 65(5), is mandatory: an ethics executive **shall** make a determination with respect to any matter that is the subject of inquiry. The mandatory nature of this provision is not disputed by the Integrity Commissioner.<sup>54</sup> If this Court determines that the Integrity Commissioner has conducted inquiries, there can be no question that he is mandated to issue a determination as to whether conflict of interest rules have been breached.

52. The *PSOA* contains no definition or clear guidance as to what constitute “inquiries” or “inquiry” within the meaning of ss. 65(4)-(5). Unlike the terms “request” or “notification” in s.

---

<sup>53</sup> *Legislation Act, 2006*, SO 2006, c 21, Sch F, s 64(1).

<sup>54</sup> The Integrity Commissioner has acknowledged the mandatory nature of this provision. See the Letter from The Honourable J. David Wake to Duff Conacher dated April 11, 2019, AR, tab 2M. p. 167: “If I choose to exercise my discretion to make inquiries, I must then make a determination as to the subject matter of the inquiry.”

65(4), no other provision in the statute serves as a reference point for what would be included within the scope of “inquiry”. The term does appear in numerous other provisions of the *PSOA*, but primarily in the same context:

(a) Sections 69(4)-(5), 84(3)-(4), 93(3)-(4) and 98(3)-(4) mirror the language of ss. 65(4)-(5), outlining the ethics executive’s powers and obligations, including the references to “inquiries”, but apply to different circumstances and categories of public service.

(b) Sections 90(4) and 92(4) similarly provide that the ethics executive or Integrity Commissioner “shall make such inquiries as he or she considers appropriate”, on receiving an application for authorization to seek to become or campaign on behalf of a candidate in a municipal election or engage in political activity.<sup>55</sup>

53. The words of the statute therefore reflect an intention that an ethics executive’s “inquiries”, within the meaning of ss. 65(4)-(5) of the *PSOA*, be read broadly and flexibly. There is no definition, guidance, limitation or restriction in the legislation with respect to the scope of “inquiries”, and an ethics executive is given discretion to determine the nature and extent of inquiry that is “appropriate”. However, because the ethics executive is mandated to issue a “determination” with respect to the subject of any inquiry, there is a clear policy intention that the ethics executive see any inquiries, whatever their nature, through to their conclusion. This means that (a) he or she will be sufficiently informed and in a position to come to a determination, and (b) he or she is not permitted to begin a path of inquiry, and subsequently abandon it should he or she dislike the information received (or for any other reason). Such a structure protects the independence, integrity, and public-serving role of the ethics executive.

54. Looking to the broader scheme and objects of the statute supports a broad and flexible

---

<sup>55</sup> The term also appears in more specialized sections of the legislation, with corresponding reference points. Sections 104-105 and 140-141 include sub-sections pertaining to the ability of the Ontario Labour Relations Board, the Public Service Grievance Board, and the Grievance Settlement Board to “inquire”, or complete an “inquiry”, into certain matters or complaints under certain statutory provisions. In context, given the differences in powers, purposes and structures, it is clear that the “inquiries” contemplated by these administrative boards are different in nature from those “inquiries” contemplated being completed by an ethics executive or the Integrity Commissioner.

reading of “inquiries”/“inquiry”. Conflict of interest rules and ethical guidelines are part of multiple statutes and codes that “regulate behaviour” of government officials “for the important goal of preserving the integrity of government”.<sup>56</sup> As the Supreme Court of Canada stated in *R v Hinchey*:

*It is hardly necessary for me to expand on the importance of having a government which demonstrates integrity. Suffice it to say that our democratic system would have great difficulty functioning efficiently if its integrity was constantly in question. While this has not traditionally been a major problem in Canada, we are not immune to seeing officials fall from grace as the result of a violation of the important trust we place in their integrity. [...] I would merely add that the 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. As the U.S. Congress has stated about its own anti-corruption measures:*

*The necessity for maintaining high ethical standards of behaviour in the Government becomes greater as its activities become more complex and bring it into closer and closer contact with the private sector of the Nation’s economy.*<sup>57</sup>

55. Noting that “Protecting the integrity of government is crucial to the proper functioning of a democratic system”, the Court held that the *Criminal Code* provision at issue in *R v Hinchey*, which dealt with improper rewards or benefits to government officials, must be interpreted not only to preserve the integrity of government, but to preserve the appearance of the integrity as well, as “the democratic process can be harmed just as easily by the appearance of impropriety as with actual impropriety itself”.<sup>58</sup>

56. The *PSOA*, therefore, is a critical part of a broader regime designed to maintain ethical conduct in government. It is a companion to a series of statutes related to ethics, including the *MIA*, the *Lobbyists’ Registration Act, 1998*<sup>59</sup> and *Criminal Code* provisions dealing with egregious ethical contraventions such as corruption and influence peddling.

---

<sup>56</sup> *R v Hinchey*, 1996 CanLII 157 (SCC) at para 13 [**Hinchey**].

<sup>57</sup> *Hinchey*, at para 14.

<sup>58</sup> *Hinchey*, at paras 15-17.

<sup>59</sup> *Lobbyists’ Registration Act, 1998*, SO 1998, c 27, Sch.

57. The *PSOA*, together with the *MIA*, addresses long-standing concerns about abuses of public office by some public office holders. They set out a regime of conflict of interest and post-employment rules for public office holders, including ministers of the Crown, ministerial staff, certain Governor in Council appointees, and Members of the Ontario legislature. The regime is enforced and administered by the Integrity Commissioner, an officer of Parliament reporting directly to Parliament, endowed with broad investigative and enforcement powers and exercising quasi-judicial functions.

58. The key objects of the *PSOA* are apparent from the parliamentary submissions and debates at the time the *PSOA* initially was introduced:

The legislation before the House today recognizes the value and trust all Ontarians place on their public service and supports its true mission: to serve the public interest and to uphold public trust. Values like trust, fairness and excellence have always been part of the Ontario public service culture. This legislation will help ensure that the public service will continue to be accountable, ethical, non-partisan and professional. The legislation includes a new statement of purpose that will help to foster a greater common understanding of the role of this fundamental democratic institution. The legislation also provides the tools to ensure that we achieve that purpose. The legislation would help ensure the public service is effective in serving the public, the government and the Legislature. It would ensure that the public service of Ontario is accountable, ethical, non-partisan and professional. It provides a clear framework for the administration, leadership and management of the Ontario public service, and it clarifies the rights and duties of public servants concerning ethical conduct.

[...]

Ontario's public service has a strong culture of ethics. This proposed legislation reinforces this and ensures that ministers and deputy ministers are accountable for the conduct of their staff and for adherence to conflict-of-interest rules.

[...]

I'm proud of the legislation we are introducing today. The legislation would enhance transparency and accountability in the public service and make it more efficient. It would update and clarify responsibilities in many areas so that the fundamental principles of public service -- accountability, competency, non-partisanship and professionalism -- are clearly and firmly identified. This is why we've taken an historic step today by introducing legislation that brings greater transparency and accountability to the public service while recognizing Ontario's long-standing tradition of public service excellence.

Our government is committed to ensuring the public continues to be well served by an accountable, ethical, non-partisan and professional public service which is dedicated to making this province the best it can be.<sup>60</sup>

59. From these passages, as well as the scheme of the *PSOA* itself, the objects of the *PSOA* are clear: ensuring the accountability, transparency, integrity, non-partisanship and professionalism of government, all in the interest of serving and maintaining the confidence of the people of Ontario. These objects are directly connected with the constitutional principles of rule of law and democracy.

60. Taking the words of the statute within this broader context, it is clear that the terms “inquiry” and “inquiries”, as used in ss. 65(4)-(5) of the *PSOA*, are to be interpreted broadly. The general use of the term “inquiries” in the *PSOA* can be contrasted with s. 31(1) of the *MIA*, which refers to the Integrity Commissioner conducting “an inquiry” in response to matters referred under that statute.<sup>61</sup> The use of the article “an” connotes a more formal, defined process than the general, flexible “inquiries”/“inquiry” used in the *PSOA*.

61. The *PSOA*'s reference to “inquiries”, interpreted broadly, encompasses the Integrity Commissioner's efforts in respect of French, Orsini, O'Toole and Harrington as part of his investigation into the Premier and preparation of the Report. While the Report is stated to arise out of requests pursuant to the *MIA* for the Integrity Commissioner's opinion regarding the Premier specifically,<sup>62</sup> the Integrity Commissioner's inquiries were not limited to the Premier's conduct. The Report contains numerous findings about the conduct of French, Orsini, O'Toole and Harrington, which indicate that these individuals provided preferential treatment to Taverner throughout the OPP Commissioner appointment process, to Di Tommaso in the

---

<sup>60</sup> Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38th Parl, 2nd Sess (2 Nov 2006) at 1350-1400 (Hon Gerry Phillips). See also Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38th Parl, 2nd Sess (15 Nov 2006) at 1610-1640, 1710 (Hon Gerry Phillips, Vic Dhillon, Lorenzo Berardinetti, Khalil Ramal) [**Hansard, 38<sup>th</sup> Parl. 15 Nov 2006**].

<sup>61</sup> *MIA*, s 31(1).

<sup>62</sup> Report at pp. 3-4, 11-14, AR, tab 2F, pp. 33-34, 41-44.

context of the Deputy Minister of Community Safety position, and to Froggatt by connecting him with Taverner. A chart containing examples of such findings in the Report is attached as Appendix A to this factum. These factual findings could only have been made through inquiries about conduct beyond that of the Premier.

62. The Integrity Commissioner's inquiries into individuals beyond the Premier himself compelled him to go beyond concluding that the Premier had not breached conflict of interest rules, stating generally and repeatedly that the process used for Taverner's recruitment had "some troubling aspects" and was "flawed".<sup>63</sup> Indeed, the Integrity Commissioner stated that the process was flawed "through no actions of Premier Ford", clearly suggesting that the process became flawed by the conduct of other individuals.<sup>64</sup> It is apparent that, in making inquiries into the Premier's conduct arising from a "request", the Integrity Commissioner had concerns about contraventions of conflict of interest rules by other public officials, and expanded his inquiries to delve into the conduct of those officials. Democracy Watch asserts that these inquiries were undertaken as an exercise of the Integrity Commissioner's power under s. 65(4) of the *PSOA*.

63. Having made sufficient inquiries in respect of the conduct of French, Orsini, Harrington and O'Toole to come to these views, the Integrity Commissioner cannot stop short of issuing determinations as to whether they breached conflict of interest rules. Finding it appropriate to comment on the behaviour of public officials, and even going so far as to suggest it is problematic, without taking the final step of determining whether it amounts to a breach of conflict of interest rules, is directly contrary to the objects of the *PSOA*: such an approach fails to hold government officials accountable, fails to prevent future conflicts of interest by refraining from identifying where they have occurred, and fails to foster public confidence in the integrity

---

<sup>63</sup> Report at paras 240, 242, 342, 371, AR, tab 2F, pp. 92-93, 120, 126.

<sup>64</sup> Report at para 342, AR, tab 2F, p. 120.

of their governmental institutions. An interpretation of the *PSOA* that allows such a result would be contrary to the underlying purposes and goals of the *PSOA*, and inconsistent with a proper, contextual interpretation of the obligations of the Integrity Commissioner under ss. 65(4)-(5). The only proper interpretation of an “inquiry” by the Integrity Commissioner is one which captures the Integrity Commissioner’s efforts here.

64. Having made inquiries in respect of the conduct of French, Orsini, Harrington and O’Toole, the Integrity Commissioner is mandated to issue determinations as to whether that conduct amounted to breaches of applicable conflict of interest rules, as the Integrity Commissioner himself has acknowledged.<sup>65</sup>

**D. In the alternative, the Integrity Commissioner has exercised his discretion unreasonably in refusing to make inquiries into the Individuals’ conduct**

65. If the Integrity Commissioner has not already made inquiries with respect to the conduct of French, Orsini, O’Toole and Harrington, then he has unreasonably exercised his discretion in deciding not to do so.

66. The Integrity Commissioner takes the position that s. 65(4) of the *PSOA*, pursuant to which an ethics executive “may make such inquiries as he or she considers appropriate”, grants him “a broad discretion with respect to how he will allocate the limited resources of his office in the public interest.”<sup>66</sup>

67. However, the Integrity Commissioner’s exercise of that statutory discretion is not unfettered. As with any exercise of discretion, it must be reasonable, in the sense that it must be exercised within the perspective and underlying purposes of the statute which confers

---

<sup>65</sup> Letter from The Honourable J. David Wake to Duff Conacher dated April 11, 2019, AR, tab 2M, p. 167: “If I choose to exercise my discretion to make inquiries, I must then make a determination as to the subject matter of the inquiry.”

<sup>66</sup> Letter from Justin Safayeni to Rebecca Shoom dated November 13, 2019, AR, tab 2S, p. 193.

the discretion, and it must respect procedural fairness.<sup>67</sup> In exercising discretionary authority, relevant factors must be taken into account, and irrelevant factors must play no part in the consideration; the decision must be neither arbitrary nor unreasonable.<sup>68</sup>

68. The Integrity Commissioner has offered no reasonable or consistent basis for his decision not to make inquiries into French, Orsini, O'Toole and Harrington. Rather, Democracy Watch's requests for explanation and clarification surrounding this matter have been met with an ever-changing story.

69. In December 2018, Democracy Watch requested that the Integrity Commissioner commence an investigation into the appointment of Taverner as OPP Commissioner by the Premier.<sup>69</sup> The Integrity Commissioner's response was that he is "unable to conduct an inquiry unless a member requests it under section 30 of the *Members' Integrity Act, 1994*."<sup>70</sup> The Integrity Commissioner subsequently did complete an investigation into Taverner's appointment, resulting in the Report released in March 2019.

70. In March 2019, after the release of the Report, Democracy Watch wrote to the Integrity Commissioner and the Conflict Commissioner, requesting that they investigate, and issue public determinations, with respect to French, Orsini, O'Toole and Harrington.<sup>71</sup> In response, the Integrity Commissioner and Conflict Commissioner both rejected Democracy Watch's requests, but with differing rationales:

---

<sup>67</sup> *Habtenkiel v Canada (Citizenship and Immigration)*, 2014 FCA 180 at para 38; *Demaria v Canada (Attorney General)*, 2017 FC 45 at para 61; *Gilmor v Nottawasaga Valley Conservation Authority*, 2017 ONCA 414 at para 66.

<sup>68</sup> *Mavi v Canada (Attorney General)*, 2009 ONCA 794 at para 121, rev'd in part 2011 SCC 30; *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 at para 53 (SCC)

<sup>69</sup> Letter from Duff Conacher to The Honourable J. David Wake dated December 4, 2018, RAR, tab 1A, pp. 4-8.

<sup>70</sup> Letter from The Honourable J. David Wake to Duff Conacher dated December 4, 2018, RAR, tab 1B, p. 10.

<sup>71</sup> Letter from Duff Conacher to the The Honourable J. David Wake and Sidney Linden dated March 25, 2019, AR, tab 2G, pp. 133-139.

(a) The Conflict Commissioner's refusal was premised on vague references to the *PSOA* and *Freedom of Information and Protection of Privacy Act*, with no apparent connection to the nature of Democracy Watch's request:

The role of the Conflict of Interest Commissioner is set out in the *Public Service of Ontario Act, 2006* (PSOA) and its regulations. Under the PSOA, the Conflict of Interest Commissioner is the ethics executive for current and former Secretaries of Cabinet. However, the PSOA and the *Freedom of Information and Protection of Privacy Act* limit the type of information that this office may disclose. For example, section 3 of Ontario Regulation 384/07 to the PSOA prohibits the disclosure of personal information by the commissioner and sets out the limited exceptions to when such disclosure is permitted. In light of the disclosure restrictions that this office is subject to, we are not able to accommodate your request.<sup>72</sup>

(b) The Integrity Commissioner's refusal was premised on the employment relationship between public servants and the government:

The determinations I make as Ethics Executive to ministers' staff are handled in confidence, although samples of the inquiries and determinations are provided in an abbreviated and anonymized format in the Office's annual report. Given the employment relationship between public servants and the government I do not think that it would be appropriate for any determinations I make to public servants as their Ethics Executive to be made public as you suggest.<sup>73</sup>

Both of these responses implied that the Integrity Commissioner and Conflict Commissioner had issued determinations with respect to the individuals identified in Democracy Watch's letter, but were refusing to make them public. This is the only reasonable interpretation of their references to prohibitions on the disclosure of "personal information" (although it is unclear how a determination of whether a public official has acted in a conflict of interest would amount to "personal information") and to the purported impropriety of making an ethics executive's determinations public.

71. In September 2019, Democracy Watch sought clarification and further details of the bases for the denials of its requests, specifically expressing confusion at how *FIPPA*'s definition of "personal information" would extend to whether a public servant has violated the law.<sup>74</sup> The

---

<sup>72</sup> Letter from Sidney Linden to Duff Conacher dated March 28, 2019, AR, tab 2L, p. 165.

<sup>73</sup> Letter from the Honourable J. David Wake to Duff Conacher dated April 11, 2019, AR, tab 2M, p. 168.

<sup>74</sup> Letter from Duff Conacher to the Honourable J. David Wake dated September 30, 2019, AR, tab 2O, pp. 173-175.

Integrity Commissioner provided no clarification in response, instead doubling down on and repeating, word-for-word, the position expressed in his last letter:

I have reviewed your letter, however my position is unchanged from the explanation I provided in my letter to you of April 11, 2019. As I indicated at that time, the determinations I make as Ethics Executive to ministers' staff are handled in confidence, although samples of the inquiries and determinations are provided in an abbreviated and anonymized format in the Office's annual report. Given the employment relationship between public servants and the government I do not think that it would be appropriate for any determinations I make to public servants as their Ethics Executive to be made public as you suggest.<sup>75</sup>

The Integrity Commissioner offered no comment on the Conflict Commissioner's references to *FIPPA*, which were a core component of Democracy Watch's clarification request.

72. After the commencement of this application, the Integrity Commissioner "reconsidered his position" in respect of his responses to Democracy Watch's earlier correspondence. Contrary to his earlier representations, the Integrity Commissioner, for the first time, indicated that, in his view, he had not made any inquiries with respect to the relevant individuals. He also offered new explanations for why he had not done so:

The Commissioner has reconsidered his position on this issue. In the particular circumstances of this case, where the conduct of the above-noted individuals has already been publicly disclosed in the Report, the Commissioner believes that it is in the public interest to confirm that he has not made any inquiries with respect to the above-named individuals pursuant to the relevant provisions of the Act.

[...] Under s. 65(4) of the Act, the Commissioner has a broad discretion with respect to how he will allocate the limited resources of his office in the public interest. [...]

In addition, on a practical level, I would note that Mr. Orsini and Mr. French left the public service in January and June 2019, respectively. While the Commissioner retains jurisdiction to commence an inquiry regarding a person after they have left the public service, this factor weighs against commencing a separate inquiry at this stage, particularly when the conduct at issue has already been canvassed in the Report.<sup>76</sup>

These new explanations, in brief, relate to (a) the conduct of the relevant individuals already having been disclosed in the Report, (b) the limited resources of the Integrity Commissioner's

---

<sup>75</sup> Letter from the Honourable J. David Wake to Duff Conacher dated October 1, 2019, AR, tab 2P, p. 177.

<sup>76</sup> Letter from Justin Safayeni to Rebecca Shoom dated November 13, 2019, AR, tab 2S, pp. 193-194.

office, and (c) that Orsini and French (and, now, Harrington<sup>77</sup>) have left the public service.

73. The three factors now advanced as justifying the Integrity Commissioner's decision not to commence inquiries do not reflect an appropriate exercise of discretion:

(a) **Conduct already being disclosed in the Report:** This is not a relevant consideration. The role of an ethics executive is not simply to reveal conduct that is potentially problematic; it is to enforce ethics rules and ensure the integrity and accountability of government, consistent with the objects and provisions of the *PSOA*. This role is not fulfilled by publicly revealing conduct and identifying it as problematic, but refusing to proceed to a formal "inquiry". Such an approach actively works against the objects of the *PSOA*, as it misleads the public: publicizing and expressing concern about conduct, but stopping short of formally investigating it, leaves the impression that it is proper and not worthy of investigation. Relying on this factor is not in the public interest, and is not within the perspective and purposes of the statute which grants the Integrity Commissioner's discretion.

(b) **Limited resources:** While this is not an improper consideration on its own, it must be weighed against proper, relevant considerations when it is a factor in the exercise of discretion. In the context of this particular case, this factor should be given little weight. Minimal resources would be required of the OICO to issue public determinations as to the conduct of French, Orsini, Harrington and O'Toole, given that the Integrity Commissioner has already conducted extensive interviews and other investigations and reached factual conclusions as to the relevant conduct.

(c) **Orsini, French and Harrington having left the public service:** This is not a relevant consideration. The *PSOA* explicitly provides that former public servants will have an ethics executive, and they are specifically identified on OICO's list identifying the ethics executives for various categories of public servants.<sup>78</sup> Where the statute conferring discretion specifically grants jurisdiction over a certain class of individuals, with no indication that this class is to be treated any differently or less seriously, individuals' membership in that class cannot properly be a relevant consideration weighing against the exercise of discretion in respect of those individuals.

74. In any event, even if these three factors were all proper considerations, the Integrity Commissioner has presented no evidence that he actually considered these factors, or any others, before this application was commenced. Further, there is no evidence indicating if or how the Integrity Commissioner balanced the above factors against the public interest in

---

<sup>77</sup> LinkedIn profile of Greg Harrington as of December 12, 2019, AR, tab 2J, pp. 152-160; Letter from Justin Safayeni to Rebecca Shoom dated November 20, 2019, RAR, tab 1D, p. 15.

<sup>78</sup> *PSOA*, s. 63; "Ethics Executives", OICO website, as visited on December 12, 2019, AR, tab 2E, p. 28.

inquiring into conduct that caused concern, or how that balance favoured a decision not to make inquiries – a fundamental omission where the conferring statute is, at its core, about serving the public interest and garnering public confidence in government. The only evidence on this application as to the Integrity Commissioner’s decision-making process and motives is the content of the correspondence reviewed above, which reflects an opaque, constantly moving target of why the Integrity Commissioner does not want to further investigate Orsini, French, Harrington and O’Toole.

75. The only reasonable inference from the Integrity Commissioner’s frequent shifts in position, and the lack of evidence that any balancing of proper factors occurred, is that the Integrity Commissioner did not conduct such an assessment. His decision to refrain from making inquiries into Orsini, French, Harrington and O’Toole is therefore arbitrary and unreasonable, and an improper exercise of discretion.

76. Further, the total lack of transparency in the Integrity Commissioner’s approach to this matter amounts to an exercise of discretion that is not within the perspective and underlying purposes of the statute which confers the discretion. A core object of the *PSOA* is to ensure the transparency and accountability of government. By acting in an opaque manner and failing to engage in or provide any rational, transparent consideration for the exercise of his functions, the Integrity Commissioner is not exercising his discretion within the perspective and purposes of the *PSOA*.

77. In such circumstances, the Integrity Commissioner must be directed to exercise his discretion in a proper manner, the only reasonable result of which is a decision to make inquiries into French, Orsini, Harrington and O’Toole.

**E. If the Integrity Commissioner is required to issue determinations, those determinations must be public**

78. If the Integrity Commissioner has conducted inquiries with respect to French Orsini,

Harrington and O'Toole, or if he is required to do so, then he is or will be mandated to issue determinations as to whether those individuals contravened conflict of interest rules. Those determinations must be issued publicly.

79. The Integrity Commissioner has acknowledged that no provision in the *PSOA* prohibits him from making a determination public, but noted that “neither is there any authority for [him] to do so.” In such circumstances, he has determined not to issue determinations publicly on the basis of the employment relationship between public servants and the government:

Given the employment relationship between public servants and the government I do not think that it would be appropriate for any determinations I make to public servants as their Ethics Executive to be made public as you suggest.<sup>79</sup>

80. The Integrity Commissioner has offered no explanation of why public determinations would be inappropriate, and provided no authorities supporting his position.

81. In fact, the Integrity Commissioner's position is directly contrary to the objects of the *PSOA*, which centre on transparency and accountability of government. Hiding in secrecy determinations of whether public officials have violated their ethical obligations does not encourage public confidence, does not hold public officials accountable, and does not further the transparency of government.

82. Indeed, the parliamentary debates surrounding the enactment of the *PSOA* specifically indicate an intent that reports by the Integrity Commissioner be public:

The proposed legislation gives power and authority to an independent officer of the Legislature, the Integrity Commissioner, to investigate and **publicly report** on allegations of wrongdoing.<sup>80</sup> [emphasis added]

There is no basis on which an ethics executive's determinations on conflicts of interest should

---

<sup>79</sup> Letter from The Honourable J. David Wake to Duff Conacher dated April 11, 2019, AR, tab 2M, p. 168.

<sup>80</sup> Hansard, 38<sup>th</sup> Parl. 15 Nov 2006, at 1630 (Vic Dhillon).

be treated any differently than other allegations or concerns of wrongdoing.

83. Requiring the public issuance of determinations is also consistent with the *Charter*. In *Ontario (Public Safety and Security) v Criminal Lawyers' Association*, the Supreme Court of Canada held that access to government documents is constitutionally protected under s. 2(b) of the *Charter* where access is a necessary precondition of meaningful expression on the functioning of government, subject only to privileges and functional constraints.<sup>81</sup> While this application does not assert a breach of s. 2(b), Democracy Watch submits that the Integrity Commissioner's statutory obligations, including its discretion, must be interpreted and applied in a manner compliant with *Charter* values.<sup>82</sup> Failing to publicly disclose determinations as to whether public officials have breached conflict of interest rules substantially impedes meaningful public discussion and criticism on matters of public interest, which is inconsistent with *Charter* values and must be taken into account by the Integrity Commissioner.

84. A determination of whether a public official has breached conflict of interest rules cannot constitute the type of private or personal information that is exempt from public disclosure. In the context of *FIPPA*, on which the Conflict Commissioner relied, nothing in the statute's definition of "personal information" could reasonably extend to whether a public official breached applicable rules;<sup>83</sup> and even if it did, it would likely engage exceptions related to the public interest.<sup>84</sup> Access to information legislation has an overarching purpose of facilitating

---

<sup>81</sup> *Ontario (Public Safety and Security) v Criminal Lawyers' Association*, 2010 SCC 23 at paras 30-31.

<sup>82</sup> *Doré v Barreau du Québec*, 2012 SCC 12 at para 24: "It goes without saying that administrative decision-makers must act consistently with the values underlying the grant of discretion, including *Charter* values".

<sup>83</sup> *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31, s 2(1) "personal information" [*FIPPA*].

<sup>84</sup> Section 21(1) of *FIPPA* provides that personal information should not be disclosed except, among other things, "if the disclosure does not constitute an unjustified invasion of personal privacy", the determination of the applicability of which is to include consideration of whether "the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny": see *FIPPA*, ss. 21(1)-(2). Further, certain exemptions from disclosure do not apply

democracy by ensuring that citizens have the information required to participate meaningfully in the democratic process, and that politicians and bureaucrats remain accountable to the citizenry.<sup>85</sup> The Integrity Commissioner's position that his determinations as ethics executive should be kept confidential subverts these principles, on no apparent basis.

85. In the context of the *PSOA*, and with a view to *Charter* values and broader principles applicable to the disclosure of information relevant to public discourse, it is clear that any determinations made by the Integrity Commissioner as ethics executive, with respect to whether a public official has breached conflict of interest rules, must be made public.

#### **PART IV - ORDER REQUESTED**

86. The Applicant requests:

(a) An Order requiring the Integrity Commissioner to issue a public determination with respect to whether the conduct of French, Orsini, Harrington and O'Toole in the context of the Taverner appointment process amounted to breaches of their obligations; and

(b) In the alternative, an Order requiring the Integrity Commissioner to make inquiries into the conduct of French, Orsini, Harrington and O'Toole with a view to determining whether their conduct, in the context of the Taverner appointment process, amounted to breaches of their obligations, and requiring the Integrity Commissioner to issue a public determination based on those inquiries.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of February, 2020.



---

Rebecca Shoom  
Lerners LLP  
Lawyer for the Applicant

---

"where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption": *FIPPA*, s. 23.

<sup>85</sup> *Dagg v Canada (Minister of Finance)*, 1997 CanLII 358 at para 61 (SCC).

**CERTIFICATE**

I, Rebecca Shoom, counsel to the Applicant, Democracy Watch, certify that the oral argument will take approximately 2 hours not including reply.

A handwritten signature in black ink, appearing to read 'R. Shoom', is written over a horizontal line.

Rebecca Shoom  
Lerners LLP

Lawyer for the Applicant

## SCHEDULE "A" - LIST OF AUTHORITIES

1. *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45
2. *Canada (Information Commissioner) v Canada (Minister of National Defence)*, 2011 SCC 25
3. *Sierra Club of Canada v Canada (Minister of Finance)*, 1998 CanLII 9124 (FC)
4. *Nova Scotia Board of Censors v McNeil*, 1975 CanLII 14 (SCC)
5. *Democracy Watch v Conflict of Interest and Ethics Commissioner*, 2009 FCA 15
6. *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65
7. *Oakville (Town) v Clublink Corporation ULC*, 2019 ONCA 826
8. *Peel (Police) v Ontario (Special Investigations Unit)*, 2012 ONCA 292
9. *R v Hinchey*, 1996 CanLII 157 (SCC)
10. Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38th Parl, 2nd Sess (2 Nov 2006)
11. Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 38th Parl, 2nd Sess (15 Nov 2006)
12. *Habtenkiel v Canada (Citizenship and Immigration)*, 2014 FCA 180
13. *Demaria v Canada (Attorney General)*, 2017 FC 45
14. *Gilmor v Nottawasaga Valley Conservation Authority*, 2017 ONCA 414
15. *Mavi v Canada (Attorney General)*, 2009 ONCA 794, rev'd in part 2011 SCC 30
16. *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC)
17. *Ontario (Public Safety and Security) v Criminal Lawyers' Association*, 2010 SCC 23
18. *Doré v Barreau du Québec*, 2012 SCC 12
19. *Dagg v Canada (Minister of Finance)*, 1997 CanLII 358 at para 61 (SCC)

## SCHEDULE "B" - RELEVANT STATUTES

### ***Members' Integrity Act, 1994, SO 1994, c 38***

**23** (1) There shall be an Integrity Commissioner who is an officer of the Assembly.

(2) The Assembly shall, by order, appoint the Commissioner.

(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.

[...]

**30** (1) A member of the Assembly who has reasonable and probable grounds to believe that another member has contravened this Act or Ontario parliamentary convention may request that the Commissioner give an opinion as to the matter.

(2) The request shall be in writing and shall set out the grounds for the belief and the contravention alleged.

(3) The member making the request shall promptly give a copy of it to the Speaker, who shall cause the request to be laid before the Assembly if it is in session or, if not, within 10 days after the beginning of the next session.

[...]

**31** (1) When a matter is referred to the Commissioner under section 30, the Commissioner may conduct an inquiry, after giving the member whose conduct is concerned reasonable notice.

(2) If the matter was referred by a member,

(a) the Commissioner may elect to exercise the powers under sections 33 and 34 of the Public Inquiries Act, 2009, in which case those sections apply to the inquiry; and

(b) the Commissioner shall report his or her opinion to the Speaker.

---

### ***Public Service of Ontario Act, 2006, SO 2006, c 35, Sch A***

69(4)-(5), 84(3)-(4), 90(4), 92(4), 93(3)-(4), 98(3)-(4), 104-105, 140-141

**62** (1) The ethics executive for a public servant is determined as follows:

1. The ethics executive for a public servant employed under Part III who works in a ministry, other than in a minister's office, is the deputy minister.

2. The ethics executive for a deputy minister is the Secretary of the Cabinet.
3. The ethics executive for a public servant who works in a public body, whether as a government appointee, as an employee under Part III or as an employee of the public body is the individual who is prescribed under subsection 71 (1.1) for the public servant or, if no individual is prescribed under that clause for the public servant, the chair of the body.
4. The ethics executive for the Secretary of the Cabinet, the chairs of public bodies and any individuals prescribed under subsections 55 (1.1) and 71 (1.1) is the Integrity Commissioner.
5. Repealed

[...]

**63** The ethics executive for a former public servant is determined as follows:

1. The ethics executive for a former public servant who, immediately before ceasing to be a public servant, was a public servant employed under Part III who worked in a ministry, other than in a minister's office, is the Public Service Commission.
2. The ethics executive for a former public servant who, immediately before ceasing to be a public servant, worked in a public body, whether as a government appointee, as an employee under Part III or as an employee of the public body, is the Integrity Commissioner.
3. The ethics executive for a former deputy minister or a former Secretary of the Cabinet is the Integrity Commissioner.

**64** The ethics executive for a public servant who works in a ministry, other than in a minister's office, or who works in a public body shall,

- (a) ensure that public servants who work in the ministry or the public body are familiar with the conflict of interest rules that apply in respect of the ministry or the public body; and
- (b) promote ethical conduct by public servants who work in the ministry or the public body.

**65** (1) A public servant or former public servant may request that his or her ethics executive determine a question about the application of conflict of interest rules to the public servant or former public servant.

(2) A supervisor of a public servant may request that the public servant's ethics executive determine a question about the application of conflict of interest rules to the public servant.

(3) If a public servant or a former public servant has personal or pecuniary interests that could raise an issue under the conflict of interest rules that apply to him or her, the public servant or former public servant shall notify his or her ethics executive.

(4) The ethics executive may make such inquiries as he or she considers appropriate in response to a request, a notification or where the ethics executive has concerns that a conflict of interest rule has been or is about to be contravened by a public servant or former public servant.

(5) An ethics executive shall,

(a) make a determination with respect to any matter that is brought to the attention of the ethics executive under subsections (1) to (3) or that is the subject of inquiry under subsection (4); and

(b) in the case of a determination that there is a conflict of interest or potential conflict of interest, give the public servant or former public servant directions, if any, that the ethics executive considers appropriate to address the conflict of interest or potential conflict of interest.

[...]

**69** (4) The ethics executive may make such inquiries as he or she considers appropriate in response to a request, a notification or where the ethics executive has concerns that a conflict of interest rule has been or is about to be contravened by a public servant or a former public servant who works or, immediately before ceasing to be a public servant, worked in a minister's office.

(5) The ethics executive shall,

(a) make a determination with respect to any matter that is brought to his or her attention under subsections (1) to (3) or that is the subject of inquiry under subsection (4); and

(b) in the case of a determination that there is a conflict of interest or potential conflict of interest, give the public servant or former public servant who works or, immediately before ceasing to be a public servant, worked in a minister's office directions, if any, that the ethics executive considers appropriate to address the conflict of interest or potential conflict of interest.

[...]

**84** (3) The ethics executive may make such inquiries as he or she considers appropriate in response to a request, a notification or where the ethics executive has concerns that a public servant has engaged or is about to engage in political activity in contravention of this Part or a direction or regulation under this Part.

(4) An ethics executive shall,

(a) make a determination with respect to any matter that is brought to the attention of the ethics executive under subsection (1) or (2) or that is the subject of inquiry under subsection (3); and

- (b) in the case of a determination that a public servant has or is about to engage in political activity in contravention of this Part or a direction or regulation under this Part, give the public servant directions, if any, that the ethics executive considers appropriate to address the matter.

[...]

**90** (1) A specially restricted public servant, if authorized under subsection (4), may,

- (a) be or seek to become a candidate in a municipal election;
- (b) campaign on behalf of a candidate in a municipal election.

(2) A specially restricted public servant who wishes to engage in political activity described in subsection (1) may apply under this section for authorization.

(3) The application shall specify the political activity for which authorization is sought and shall be made to the ethics executive for the specially restricted public servant.

(4) On receiving the application, the ethics executive shall make such inquiries as he or she considers appropriate and shall authorize the specially restricted public servant to engage in all or some of the political activity specified in the application if, in the opinion of the ethics executive, the activities would not interfere with the performance of the public servant's duties and,

- (a) in the case of a public servant who works in a ministry, would not conflict with the interests of the Crown;
- (b) in the case of a public servant who works in a public body, would not conflict with the interests of the body.

(5) In granting an authorization, an ethics executive may impose any conditions and restrictions that he or she considers appropriate in the circumstances, including requiring the specially restricted public servant to be on an unpaid leave of absence.

[...]

**92** (1) This section applies to specially restricted public servants who are part-time government appointees.

(2) A public servant described in subsection (1) may apply under this section for authorization to engage in any political activity that is not permitted to him or her under section 89, other than,

(3) The application shall specify the political activity and shall be made to the Integrity Commissioner.

(4) On receiving the application, the Integrity Commissioner shall make such inquiries as he or she considers appropriate and shall authorize the public servant to engage in all or

some of the political activity specified in the application if in the opinion of the Commissioner the activities would not,

- (a) interfere with the performance of the public servant's duties; or
- (b) conflict with the interests of the public body to which the public servant is appointed.

(5) In forming an opinion under subsection (4), the Integrity Commissioner shall consider the following:

1. The nature of the political activity specified in the application.
2. The scope of the discretion exercised by the public servant in his or her work, if the exercise of the discretion could reasonably be perceived to be affected by political considerations.
3. The visibility of the public servant's position.
4. Such other factors as the Commissioner considers appropriate.

(6) In granting an authorization, the Integrity Commissioner may impose any conditions and restrictions that he or she considers appropriate in the circumstances, including requiring the public servant to be on an unpaid leave of absence.

[...]

**93** (1) A specially restricted public servant or his or her supervisor may request that the public servant's ethics executive determine a question about the political activity rights that apply in respect of the public servant.

(2) A specially restricted public servant shall notify his or her ethics executive if the public servant's political activities could conflict with,

(3) The ethics executive may make such inquiries as he or she considers appropriate in response to a request, a notification or where the ethics executive has concerns that a specially restricted public servant has engaged or is about to engage in political activity in contravention of this Part or a direction or regulation under this Part.

(4) An ethics executive shall,

- (a) make a determination with respect to any matter that is brought to the attention of the ethics executive under subsection (1) or (2) or that is the subject of inquiry under subsection (3); and
- (b) in the case of a determination that a public servant has or is about to engage in political activity in contravention of this Part or a direction or regulation under this Part, give the public servant directions, if any, that the ethics executive considers appropriate to address the matter.

[...]

**98** (1) A public servant who works in a minister's office or his or her supervisor may request that the public servant's ethics executive determine a question about the political activity rights that apply in respect of the public servant.

(2) A public servant who works in a minister's office shall notify his or her ethics executive if the public servant's political activities could conflict with the interests of the Crown.

(3) The ethics executive may make such inquiries as he or she considers appropriate in response to a request, a notification or where the ethics executive has concerns that a public servant who works in a minister's office has engaged or is about to engage in political activity in contravention of this Part or a direction or regulation under this Part.

(4) The ethics executive shall,

- (a) make a determination with respect to any matter that is brought to his or her attention under subsection (1) or (2) or that is the subject of inquiry under subsection (3); and
- (b) in the case of a determination that a public servant who works in a minister's office has or is about to engage in political activity in contravention of this Part or a direction or regulation under this Part, give the public servant directions, if any, that the ethics executive considers appropriate to address the matter.

[...]

**104** (5) The Ontario Labour Relations Board may inquire into a complaint filed under subsection (4) and section 96 of the *Labour Relations Act, 1995*, except subsection (5), applies with necessary modifications as if such section, except subsection (5), is enacted in and forms part of this Act.

(6) On an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection (4), sections 110, 111, 114 and 116 of the *Labour Relations Act, 1995* apply with necessary modifications.

[...]

**105** (2) Where a settlement of a complaint is filed with a board under this section, the board shall inquire into the matter and, if the board concludes that the settlement has been breached, the board may,

- (a) make an order requiring compliance with the settlement; or
- (b) make an order respecting the complaint that could have been made in respect of that complaint under subsection 104 (8).

[...]

**140** (5) The Ontario Labour Relations Board may inquire into a complaint filed under subsection (2) or (4) and section 96 of the *Labour Relations Act, 1995*, except subsection (5), applies with necessary modifications as if such section, except subsection (5), is enacted in and forms part of this Act.

(6) On an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection (2) or (4), sections 110, 111, 114 and 116 of the *Labour Relations Act, 1995* apply with necessary modifications.

[...]

**141** (2) Where a settlement is filed with a board under this section, the board shall inquire into the matter and, if the board concludes that the settlement has been breached, the Board may,

- (a) make an order requiring compliance with the settlement; or
- (b) make an order respecting the complaint that could have been made in respect of that complaint under subsection 140 (8).

---

***Legislation Act, 2006, SO 2006, c 21, Sch F***

**64** (1) An Act shall be interpreted as being remedial and shall be given such fair, large and liberal interpretation as best ensures the attainment of its objects.

---

***Freedom of Information and Protection of Privacy Act, RSO 1990, c F.31***

**2** (1) In this Act,

[...]

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,

- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[...]

**21** (1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
- (c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels;
- (d) relates to employment or educational history;
- (e) was obtained on a tax return or gathered for the purpose of collecting a tax;
- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations; or
- (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

## Appendix A

### Selected Factual Findings and Evidence in the Integrity Commissioner's March 2019 Report re: Conduct of Dean French, Steve Orsini, Derek O'Toole and Greg Harrington

Report Reference	
Para 79	"Mr. French's evidence was that he, too, had discussions with Mr. Taverner about the position. He explained that he was "promoting the opportunity" to Mr. Taverner, indicating that "when you attract people, you sometimes have to recruit them a little bit."
Paras 80-81	<p>"On August 17, 2018, the Secretary sent an email to Greg Orencsak, the Deputy Minister for the Ministry of Finance with the subject line "Urgent: Ron Taverner." (The Ministry of Finance has jurisdiction over the OCS which presumably is why the Secretary wrote to him about Mr. Taverner.) A number of individuals were copied on this email, including Mr. French and Greg Harrington, a senior advisor to Mr. French who works in the Premier's Office.</p> <p>In the email, the Secretary asked Deputy Minister Orencsak to ensure that the OCS made a written offer to Mr. Taverner by noon that day as the President of Community Affairs or something to which Mr. Taverner and the OCS could agree. The Secretary suggested in his email that given Mr. Taverner's excellent law enforcement credentials, "we would be lucky to get him for \$270,000 a year (with a 10% at risk pay component in addition to this base salary)." Mr. Taverner's resume was attached to the email, a copy of which the Secretary explained had been provided to him by the Premier's Office. Mr. French did not specifically recall how the Secretary received it."</p>
Para 82	"The Secretary explained that earlier during the day on August 17, he received a call from Mr. French who wanted a written offer to be made to Mr. Taverner by noon that day for a position at the OCS. He explained that Mr. French told him that "we would like Mr. Taverner appointed to the Ontario Cannabis Store." Mr. French's evidence, on the other hand, was that he "recommended" that Mr. Taverner be considered for the OCS position. The Secretary did not know why the offer had to be made by noon, indicating that "they" always want to move quickly on every file. Mr. French does not recall asking that the offer be made by noon but says that it is possible that he did make this request."
Para 84	"Mr. French denied having set the salary amount for the position. Although not entirely clear, he seemed to suggest that there was a "healthy discussion" with the Secretary about the salary which was based on information regarding comparable positions in other Crown corporations. His evidence was that the salary was based on the requirements of the position rather than on the individual to whom it was being offered. The Premier's evidence was that he did not set the salary for the position."
Para 85	"There was a flurry of emails during the morning of August 17 between the Premier's Office, the Secretary, the Secretary's Office and the Ministry of Finance to finalize the terms of the offer and to locate contact information for

Report Reference	
	Mr. Taverner. In one of the emails, the Executive Assistant to Mr. French confirmed that Mr. French agreed with the proposed reporting structure for the position and the length of the contract (i.e. four years).”
Para 88	“On September 5, 2018, the Secretary’s General Counsel sent an email to public servants in Deputy Minister Orencsak’s office indicating that the Secretary had heard “that the person being considered for VP Community Affairs (Ron?) Does [sic] not want to pursue the position.” The Secretary explained that Mr. French had advised him that Mr. Taverner may not accept the offer. Mr. French indicated that he had called Mr. Taverner because some time had passed since the offer had been made. Mr. French’s evidence was that he spoke to Mr. Taverner twice but the timing of these discussions is unclear. During the first call, Mr. Taverner told him that he needed more time and during the second, that he was going to go in a “different direction” and that he “wasn’t going to take the job.””
Para 95	“Mr. Taverner’s evidence was that neither the Premier nor Mr. French told him that Mr. Hawkes had resigned; he said he heard it on the news. Mr. Taverner also indicated that neither the Premier nor Mr. French encouraged him to apply for the OPP Commissioner position and that he is the one who approached the Premier about the position after the job advertisement for the OPP Commissioner position was posted. It was Mr. Taverner’s evidence that he told the Premier that he would be applying and that the Premier had said to him that “there will be a process to go through, that certainly there was no promise of anything at the end of the process.””
Para 98	“On September 7, 2018, shortly after Mr. Hawkes’ retirement was announced, the Secretary had a discussion with the Conflict of Interest Commissioner, Sidney Linden, about the recruitment process. (Under the <i>Public Service of Ontario Act, 2006</i> , the Conflict of Interest Commissioner is the ethics executive for the Secretary of the Cabinet and in that capacity, may provide conflict of interest advice.) The Secretary suggested that he had concerns about his own involvement, or the involvement of the OPS, in the recruitment process given the OPP’s independence. He was concerned about what would happen if the OPP later had to investigate the OPS. The Secretary stated that Commissioner Linden told him that there was no reason why he could not be involved but that he recommended “building as much third-party independent validation [...] into the process.” The Secretary’s description of this exchange is consistent with Commissioner Linden’s notes, which I requested as part of the inquiry.”
Paras 99-100	<p>“It was the Secretary’s evidence that, around this time, Mr. French asked that a proposed recruitment process plan be put together. The Secretary indicated that Mr. Torigian then worked with the Public Service Commission (the “PSC”) to prepare it. (The PSC is “the governance body that provides enterprise-wide direction for the effective management of human resources (HR) in the Ontario Public Service.” It comprises the Secretary of the Cabinet, some deputy ministers and the Chief Talent Officer, who is appointed as the Chair.)</p> <p>A draft plan appears to have been sent to the Secretary on September 12 (there is no evidence about who sent it to the Secretary). It set out the various</p>

Report Reference	
	<p>steps that needed to be completed in the process, who was responsible for each and the relevant timelines. The process contemplated a March 2019 start for the new OPP Commissioner. The Secretary sent the draft plan to Mr. French, Mr. Harrington and Mr. O'Toole in the Premier's Office that same date. The Secretary acknowledged in his email to the Premier's Office that the process seemed long but that "folks think a robust process that would include consulting with front line officers would reflect well on the government."</p>
Para 102	<p>"On September 13, the Secretary wrote to Mr. Torigian to advise him that "the PO would like to have your Ministry retain an executive search firm to recruit the new Commissioner. The PO would like a group that is experienced in recruiting chiefs of police." He asked that Mr. Torigian work with Diane McArthur, Chief Talent Officer, to draft a request for proposals. The Secretary indicated during his interview that it was he who had made a suggestion to Mr. French to use a recruitment firm and that Mr. French had approved this course of action. Mr. French's evidence was that he himself recommended that a recruitment firm be used. A request for recruitment services ("RFS") was issued on September 26 with a submission deadline of October 5."</p>
Para 105	<p>"Mr. French replied to this email the same evening indicating that "[i]deally, a 30 day [sic] search process would be helpful." The Secretary replied to this email almost immediately, indicating that he would "meet with folks to accelerate the process" and that they "would get it done quickly." Mr. French wrote back: "Much appreciated."</p>
Paras 114-118	<p>"Before moving forward with the timeline of events, there is one additional important piece of evidence that I need to highlight. During his interview, Mr. French indicated that he recommended to the Secretary that Mr. Taverner be considered for the OPP Commissioner position. Given its importance, I have reproduced Mr. French's evidence on this point in its entirety:</p> <p>[transcript omitted]</p> <p>Mr. French indicated later during his interview that the Secretary had asked him whether he had any candidates to recommend. He stated that he had "limited experience with the police, so Ron Taverner was the one [he] had experience with. And, [he] knew that the Premier held him in high regard."</p> <p>Mr. French thought he remembered telling Mr. Taverner that he had recommended him for the OPP Commissioner position; he does not recall when this discussion took place. Mr. French's evidence was that "with the tone of the conversation" he would have been encouraging Mr. Taverner to apply.</p> <p>The Secretary did not recall Mr. French recommending Mr. Taverner as a candidate for the OPP Commissioner position.</p>

Report Reference	
	Premier Ford's evidence was that he could not remember Mr. French telling him that he was referring or recommending Mr. Taverner for the position."
Para 120	"Mr. Torigian indicated that on September 10, he had a meeting with the Secretary during which the Secretary suggested to him that he "give consideration to a career change." He said that the Secretary told him that Mr. French "did not have confidence in [his] leadership." Mr. Torigian offered to speak to Mr. French but the Secretary did not agree to this."
Para 122	"Mr. French said that he did ask the Secretary to consider whether "Mr. Torigian was the right fit for government." He described some concerns about Mr. Torigian's performance, as did the Secretary during his interview. I raised these concerns with Mr. Torigian who vehemently denies that there were issues with his performance. He suggested, through his counsel, that there may have been a misunderstanding by Mr. French over a comment made by Mr. Torigian at a meeting that was taken out of context."
Para 127	"Mr. French confirmed that he provided Mr. Di Tommaso's name to the Secretary as a candidate for the deputy minister position. He could not recall if the Secretary had asked him for a name or if he had volunteered it. He indicated that he got Mr. Di Tommaso's name from Chief Mark Saunders from the TPS when he asked the Chief to identify the strong performers in his organization (he specified that the question was asked of the Chief not knowing that the deputy minister position was open at the time). Mr. French stated that he then passed Mr. Di Tommaso's name along to the Secretary. He indicated that he did not direct the Secretary to hire Mr. Di Tommaso, which is consistent with the evidence of the Secretary."
Paras 129-132	<p>"It also appears that the Secretary asked Mr. Torigian about potential candidates for the position on September 19. Mr. Torigian said that during this discussion, the Secretary confided in him that he felt pressured to hire "a friend of the Fords" and that he mentioned Mr. Taverner and another name (unrelated to this matter). Mr. Torigian indicated that the Secretary told him that he was "getting pressure" to hire Mr. Taverner and that a position had been offered to Mr. Taverner which he had turned down. The Secretary did not tell him from whom he was getting pressure. Mr. Torigian went on to explain that during this discussion, the Secretary raised Mr. Taverner's name in relation to the deputy minister role, indicating that the Secretary expressed his strong opposition to hiring Mr. Taverner for that position. Mr. Torigian said that the Secretary then made a comment about "Ron Taverner perhaps being somebody that could be the Commissioner of the OPP, and that might satisfy whoever it was that was giving [the Secretary] pressure to hire a friend of Ford." Mr. Torigian indicated that the Secretary used the term "dangle the OPP Commissioner" and that it was very clear to him at that time that the Secretary meant that he could use the OPP Commissioner position as an option so that he did not have to hire Mr. Taverner as the Deputy Minister of Community Safety.</p> <p>Mr. Torigian made notes of his meeting with the Secretary on September 19 which stated, in part, as follows: "Getting pressure to hire 'friend' of Ford: [other individual] &amp; Taverner." This note was shown to the Secretary who</p>

Report Reference	
	<p>indicated that he did speak to Mr. Torigian about Mr. Taverner and the other individual but not during the same discussion. In relation to Mr. Taverner, the Secretary's evidence was that he had a discussion with Mr. Torigian to tell him that he was considering Mr. Di Tommaso for the deputy minister position and that he wanted to "move fairly quickly" because he did not want Mr. French to start "throwing ideas around" like "Taverner." The Secretary said that he told Mr. Torigian that Mr. Taverner "would not be deputy material", indicating to Mr. Torigian that he was "looking for someone that is administrative, that can handle our [...] budget- planning process."</p> <p>The Secretary, on the other hand, said that Mr. Torigian was the one who raised Mr. Taverner's name as a potential candidate for the OPP Commissioner role and that he, the Secretary, told him that Mr. Taverner would be more appropriate for that role but that he would have to go through a competitive process. The Secretary denied that he told Mr. Torigian that he felt pressure to hire Mr. Taverner and he confirmed that the Premier's Office never raised Mr. Taverner's name with him for the deputy minister role. Given that Mr. Torigian subsequently submitted a list of 30 names for consideration as OPP Commissioner, which I will deal with later, and that Mr. Taverner's name was not included on that list I find it unlikely that Mr. Torigian would have suggested Mr. Taverner's name to the Secretary at this meeting.</p> <p>The Deputy Attorney General, Mr. Boniferro, indicated that he too had a discussion with the Secretary regarding Mr. Taverner's suitability for the deputy minister role. It was Mr. Boniferro's evidence that the Secretary had talked to him about being on the hiring panel for that position. The Secretary told him that the Premier's Office had suggested Mr. Taverner for a role at the OCS in the summer and that he thought that the Premier's Office would also suggest Mr. Taverner for the deputy minister role. Mr. Boniferro stated that the Secretary thought that it would be more appropriate for Mr. Taverner to apply for the OPP Commissioner position."</p>
Para 135	<p>"The Secretary's evidence was that there was no competition to fill the position, which he said was not unusual. He, in fact, specified that more often than not, there is no competition for deputy minister positions. The evidence of Ms. McArthur was consistent with this. Mr. Di Tommaso was the only candidate whom the Secretary said he interviewed for the position. The Secretary stated that he interviewed Mr. Di Tommaso once on the phone and once in person. He provided some information about why he liked Mr. Di Tommaso: [transcript omitted]"</p>
Paras 139-142	<p>"On October 17, 2018, before the job advertisement for the OPP Commissioner was posted, the Secretary sent Mr. Taverner a request on LinkedIn to connect. A message from the Secretary accompanied the connection request which read as follows:</p> <p style="text-align: center;">Hi Ron,</p>

Report Reference	
	<p>Just want to connect with one of our finest law and order officers in the province. Steve</p> <p>In response, Mr. Taverner suggested that the two meet for coffee. The Secretary provided his government email address to Mr. Taverner so that Mr. Taverner could contact him to make an appointment.</p> <p>On October 19, Mr. Taverner sent the Secretary an email asking to meet for coffee. The Secretary stated that he did not know why Mr. Taverner had sent him this email. At the time he gave that evidence, the LinkedIn exchange referenced immediately above had not yet been produced by Mr. Taverner (for clarity, it was never produced by the Secretary). After the LinkedIn exchange surfaced, I asked the Secretary to clarify his evidence about the October 19 meeting request. The Secretary indicated that he did not recall the LinkedIn exchange and maintained that he did not know why Mr. Taverner wanted to meet for coffee.</p> <p>The Secretary's evidence was that he thought Mr. Taverner's request to meet was likely related to the OPP Commissioner position but that he would not discuss the position with Mr. Taverner if it was raised during their meeting. He did not think that it "would influence him" to meet with Mr. Taverner, explaining that he knew Brad Blair and another candidate from the OPP who later became one of the three finalists for the position. This strikes me as an after-the-fact justification since neither Mr. Blair nor the other OPP candidate had yet applied. He went on to say that he attended a lot of functions with the OPP and had discussions with senior officers. I think the point he was trying to convey was that given his contacts with the OPP, from which there were likely going to be candidates for the Commissioner position, he did not think it would be unfair to them if he met with a potential candidate from outside of the OPP."</p>
Para 145	<p>"Almost immediately after replying to Mr. Taverner's October 19 email, the Secretary sent a text to Mr. Badali which stated as follows: "Sal, this person is interested in applying for the OPP Commissioner. Please consider adding him to the list." The Secretary then sent a second text message which contained a link to Mr. Taverner's LinkedIn profile. Later that morning, the Secretary sent an email to Mr. Badali marked "Private" with the subject line, "Phone Message." The email simply said, "Did you get my message?" Mr. Badali wrote back, "if you mean your text of this morning, yes I got it and responded; have a call into RT." Mr. Badali's evidence was that this was the first time that he had heard about Mr. Taverner."</p>
Para 148	<p>"With respect to the substance of the exchange with Mr. Badali, the Secretary was asked what prompted him to send Mr. Taverner's LinkedIn profile to Mr. Badali. He said that he assumed, after he received Mr. Taverner's email of October 19, that Mr. Taverner was interested in the OPP Commissioner position. He indicated, however, that no one had told him that. The Secretary</p>

Report Reference	
	<p>was asked why he used text messaging rather than email to convey the message about Mr. Taverner. He did not recall and indicated that he may have been on his mobile device at the time and that perhaps, the “firewall” prevented him from “pasting” an external link into his email. He denied using text to avoid having his staff see the exchange.”</p>
Para 152	<p>“What troubles me about the Secretary’s evidence is that he first maintained that the meeting came at the request of Mr. Taverner “out of the blue” in the Secretary’s words. This struck me as odd and I asked the Secretary about it at his first interview and he said he would get requests to meet people all the time. Subsequently, when the LinkedIn messages emerged, it became evident that it was the Secretary who initiated the contact with Mr. Taverner resulting in the meeting of October 25. This is consistent with Mr. Taverner’s testimony, which I accept as to how the meeting came about.”</p>
Paras 165-171	<p>“The Secretary’s evidence is that Mr. French called him on October 23 after the Secretary had sent him the links to the advertisement to ask him why the advertisement was “so restrictive.” The Secretary described their interaction as follows:</p> <p>[transcript omitted]</p> <p>Mr. French’s evidence about how the Secretary became aware of the issue with the advertisement differed. He provided the following evidence when asked whether he had any involvement in the change to the advertisement:</p> <p>[transcript omitted]</p> <p>Mr. French indicated that the Secretary’s telephone call was simply to alert him that there was a problem and that the job advertisement would be changed; the Secretary was not asking for his approval to make the change. Mr. French confirmed that there were discussions internally in the Premier’s Office about the fact that the Secretary had mentioned that there was a correction being made. Mr. French indicated that he was “led to believe that it was the executive search firm or someone inside the ministry that had figured that out, and I brought it up to them.” He specified that “them” meant Mr. O’Toole and Mr. Harrington.</p> <p>When asked about who specifically “inside the ministry” had identified the issue, he replied that, “[He] was told it was the executive search firm that saw there was a difference.” He indicated that the Secretary told him that it was Odgers who had flagged the problem. Mr. French stated that he was told that the executive search firm was making the change to reflect “the way they had done it before”, two recruitment processes before (i.e. in 2010).</p> <p>Mr. O’Toole provided a different version of the events. He stated that after the Secretary sent him the links to the posted advertisement on October 23, “we</p>

Report Reference	
	<p>noticed that the requirements for chief and deputy chief only didn't meet the objectives of a wide net." When asked who specifically he was referring to, he indicated that he was referring to himself and that he could not "speak to the other people that may or may not have looked at the link." Mr. O'Toole explained that there had been a discussion "at the beginning, and the goal was to try to recruit as many wide-ranging members of the law enforcement community, both locally as well as nationally as possible." He clarified that this discussion would have been with the Secretary, Mr. French, "possibly Mr. Harrington, maybe the Deputy Attorney General or the Deputy of Community Safety." Based on this discussion, it was his view that the 2018 Advertisement "wasn't wide enough."</p> <p>Mr. O'Toole said that he then walked over to the Secretary's office (their offices are on the same floor) to highlight the issue to the Secretary. He indicated that he did not have a discussion with Mr. French before speaking to the Secretary but briefed him thereafter. Mr. O'Toole's evidence was that the Secretary agreed a "wider net" should be cast. Mr. French denied that it was Mr. O'Toole who first raised the issue with the Secretary.</p> <p>Mr. Harrington had very limited evidence regarding the advertisement. He recalls having a discussion with the Secretary during which the Secretary stated that "with this current ad description, only OPP officers would be eligible, which would exclude highly-experienced people from police forces across the country, RCMP, et cetera, et cetera."</p>
Paras 200-201	<p>"It appears that during this meeting, there was some interest in Mr. Taverner's years of service, his age and retirement plans. It was in the context of this discussion that Mr. Di Tommaso says that he disclosed the fact that he had a prior work relationship with Mr. Taverner. According to the Secretary, no concerns were raised about Mr. Taverner during the meeting and there was no discussion about any potential conflicts of interest if he was appointed. The PSC/EDC approved the short list of candidates, which included Mr. Taverner.</p> <p>The PSC/EDC also approved the composition of the two interview panels. The Secretary stated that this was done on his recommendation. For the first round of interviews, it was decided that the following three individuals would sit on the panel: Mr. Di Tommaso, Mr. Boniferro and Mr. Badali. For the second round, it would be the following individuals: Mr. Di Tommaso, the Secretary, Mr. Badali and Mr. French."</p>
Paras 203-207	<p>"The Secretary was asked why Mr. French was selected as a panellist; his evidence was that Mr. French had asked to participate "early in the process" and that no one raised any concerns about this at the PSC/EDC meeting. Mr. French confirmed that he had made this request. He said that he had assumed that he would be on the panel based on other processes in which he had been involved (for example, Hydro One). Premier Ford's evidence was that he did not know that Mr. French was supposed to be on the panel; he</p>

Report Reference	
	<p>appeared to be genuinely surprised to learn this during the course of his interview.</p> <p>The Secretary was also asked about Mr. Di Tommaso's involvement in the interview process given that he had a prior work relationship with Mr. Taverner. The Secretary indicated that he did not seek conflict of interest advice from Commissioner Linden regarding Mr. Di Tommaso's involvement. However, the Secretary stated that deputy ministers, for example, often sit on panels for an interview process in which one of their direct reports is an applicant. Ms. McArthur confirmed this, indicating that this scenario is not unusual. She stated:</p> <p>[transcript omitted]</p> <p>After the meeting on November 9, the Secretary sent a text message to Mr. French to provide him with an update. The exchange of text messages is the following (the indented texts are Mr. French's responses):</p> <p style="padding-left: 40px;">We just went through the applications for the OPP Commissioner. Ron Taverner has made the short list for interviews. He will be interviewed on Monday. I will keep you posted every step of the way.</p> <p style="padding-left: 80px;">Wonderful. Best news all day.</p> <p style="padding-left: 40px;">I need to work harder to be able to give more good news!!</p> <p style="padding-left: 80px;">LOL...you are working hard enough already !</p> <p>The Secretary was asked during his second interview why he sent this text message to Mr. French. He said that it was because Mr. Taverner "was one individual that they were interested in." When asked to clarify the meaning of "they", he indicated that he was referring to Mr. French and that he did not know whether the Premier had the same interest. The Secretary indicated that he knew that Mr. French was interested based on the "experience [he] had with the Ontario Cannabis Store." The Secretary denied that Mr. French had asked him to keep him updated on Mr. Taverner's progress specifically, indicating that Mr. French wanted updates on the overall process. The Secretary added that he had anticipated that Mr. Taverner's progress would be of interest to Mr. French. The evidence of Mr. French was that he had not asked the Secretary to keep him updated about Mr. Taverner's progress. He also said that the Premier had not asked for updates about Mr. Taverner. The Premier confirmed this.</p> <p>With respect to Mr. French's text response to the update on Mr. Taverner's progress, Mr. French indicated that he welcomed the news because the recruitment process was moving along and because he was the one who had</p>

Report Reference	
	<p>recommended Mr. Taverner. He said that his recommendation was a bit of a “dark horse” because he was an external candidate and he, Mr. French, was curious to know how Mr. Taverner would do on his own merits. The Secretary agreed that at least from this point on, he knew that Mr. French was supportive of Mr. Taverner’s candidacy.”</p>
Paras 215-216	<p>“On November 13, the second day of the interviews, the Secretary sent a text to Mr. French to provide him with another update on the process. It stated as follows:</p> <p style="padding-left: 40px;">Okay.</p> <p style="padding-left: 40px;">Great news. There are three candidates that cleared the first for the OPP: Ron Taverner, Brad Bair [sic] and [a third candidate]. Rom [sic] did an excellent job and the first round is of the view he can do the job. It is now up to the second panel of you, Mario, Sal and I to recommend to the Premier.</p> <p style="padding-left: 40px;">We are conducting the interviews this Monday to take a recommended decision to Cabinet on Nov 21.</p> <p>The Secretary stated that he specifically gave an update about Mr. Taverner because of the three candidates, “they” knew Mr. Taverner. He stated: “of the three candidates, the one they had high regard for was in it” and that he thought that “the fact that somebody they had high regard for would be viewed, in their view, as positive news.” Mr. French’s evidence about this text was that neither he nor Premier Ford had asked for an update about Mr. Taverner’s progress.”</p>
Paras 221-227	<p>“There is inconsistent and confusing evidence about whether there was a discussion during this meeting about Mr. French withdrawing from the interview panel. Mr. Badali indicated that at the time the meeting was held, it had already been determined that Mr. French would withdraw and that accordingly, this was not discussed. Mr. O’Toole recalls there being a discussion about Mr. French recusing himself and that he, Mr. O’Toole, recommended that the Premier’s Office not be involved given that from “Day 1” the Premier’s Office had not been involved (other than to understand the process). Mr. Di Tommaso knew nothing about the recusal decision.</p> <p>Mr. Harrington could not recall discussing the recusal at this specific meeting but did recall a discussion about Mr. French recusing himself; he is unsure as to the timing of that discussion. He indicated that it arose in the context of a discussion about the change to the job advertisement but could not recall whether the job advertisement had been amended at the time of the discussion; he speculated that the discussion took place in November. The reason for the recusal was not clear but he did refer to the fact that their “government is eager to get things done” which sometimes “bumps up against process” and stated that “sometimes it’s best to let process happen, because then things like this happen.” He clarified that by “things like this” he meant the perception of interference.</p>

Report Reference	
	<p>The Secretary believed that there had been a meeting scheduled on the afternoon of November 19 to brief the interview panel but that Mr. French did not participate given that he had withdrawn from the interview process. The Secretary's evidence is that on the morning of November 19, he had an in-person discussion with Mr. French and Mr. O'Toole during which Mr. French decided to withdraw from the interview panel. The Secretary explained that there was media attention about "Dean and the police" relating to an alleged request for raids of illegal cannabis shops. The Secretary indicated that he did not know how much this factored into Mr. French's decision but that Mr. French then disclosed that he knew Mr. Taverner well and questioned whether he should be on the panel. The Secretary stated that his advice to Mr. French was that he should withdraw if he was having doubts. He indicated that Premier Ford's relationship with Mr. Taverner was not raised during this discussion.</p> <p>Mr. French explained that he confirmed during the meeting that he would not be involved in the interview. He said that his decision was based on his own busy schedule and "comparables" he had been given in September which showed that there was no political staff on the panel for the 2014 OPP Commissioner recruitment process (there is documentary evidence that the Secretary sent that information to Mr. French in September). Mr. French alluded to a possible discussion with the Secretary around the time that he received information about the composition of the 2014 panel. He does not recall having any other discussions with the Secretary.</p> <p>He did recall a discussion with Premier Ford about withdrawing from the interview panel, recalling that he had told the Premier that he had reviewed the "comparables" and that there had not been a chief of staff "on prior selections." As noted earlier, the Premier was not aware when we interviewed him that Mr. French was supposed to be on the panel and does not recall having had a discussion with Mr. French withdrawing from the panel.</p> <p>Mr. French indicated that the decision was not related to the media coverage about the direction he is alleged to have given about the raids of illegal cannabis shops. He did not recall questioning whether he should withdraw given his relationship with Mr. Taverner. He stated that he does not consider Mr. Taverner a close friend, explaining that he has known him for just over a year. This is consistent with Mr. Taverner's evidence who described Mr. French as an "acquaintance."</p> <p>Given that Mr. French had known since September that no political staff had been involved in the 2014 process, he was asked why he waited until the evening before the second round of interviews to withdraw. He says that it was because he had reflected "on the comparables."</p>

<b>Report Reference</b>	
Paras 240-241	<p>“I find that there were some troubling aspects to the process that may have led, perhaps unintentionally, to a preference being given to one candidate. In coming to this conclusion I have considered the following:</p> <ol style="list-style-type: none"><li>1. As a result of his interactions with the Premier’s Office over the offer of a position with the OCS, the Secretary was made aware that the Premier thought highly of Mr. Taverner;</li><li>2. Mr. Torigian’s evidence that the Secretary told him that he felt “pressure” to hire Mr. Taverner cannot be ignored even though the Secretary does not believe he was under any pressure from the Premier or his office. To some extent, Mr. Torigian’s evidence is supported by Mr. Boniferro, who stated that he first heard of Mr. Taverner’s name when the Secretary made a comment that the Premier’s Office might suggest that he be offered a deputy minister role but that the Secretary thought it would be more appropriate for him to apply for the OPP Commissioner position. It does at least suggest that the Secretary was aware of the interest that the Premier and his office had in Mr. Taverner early on in the process;</li><li>3. The fact that the Secretary reached out to Mr. Taverner on LinkedIn on October 17 before the OPP Commissioner position had even been advertised demonstrates an elevated interest in Mr. Taverner;</li><li>4. This same level of interest was evident two days later when the Secretary sent Mr. Taverner’s name to Mr. Badali as someone who might be interested in the position of OPP Commissioner without having first met him; and</li><li>5. According to the Secretary, Mr. French revealed his friendship with Mr. Taverner, if it was not already known, on November 19, the day before the second round of interviews. Although Mr. French disagrees that this was the basis for his recusal, the point is that the Secretary believed that Mr. French had a sufficiently close relationship with Mr. Taverner that he had to recuse himself from the same interview panel as the Secretary. At the very least there existed a potential for the Secretary to be predisposed favourably towards Mr. Taverner as a result of this belief.</li></ol> <p>What I found most disconcerting in all the evidence were the text messages from the Secretary to Mr. French as to Mr. Taverner’s progress throughout the process. There seemed to be a tacit acknowledgement by the Secretary that Mr. French was rooting for Mr. Taverner’s success. Anyone examining these messages would have serious doubts as to the fairness of the process to the other candidates.”</p>
Para 263	<p>“Chris Froggatt is Mr. French’s friend. He was the vice-chair of Premier Ford’s election campaign and a member of the Premier’s transition team thereafter. Mr. Froggatt is the founding partner of Loyalist Public Affairs, a firm that specializes in government relations and strategic communications. Mr. French stated that he referred Mr. Froggatt to Mr. Taverner and that he knows that Mr. Froggatt reached out to Mr. Taverner. However, Mr. Taverner could not</p>

<b>Report Reference</b>	
	recall dealing with Mr. Froggatt other than around December 15 (this is described below)."
Para 270	"In any event, the Secretary's evidence was that the panel agreed that they should support Mr. Taverner's decision to delay the appointment. The Secretary indicated that he then went to Mr. French's office to communicate this to him and that he told Mr. French it would be very "hard for [him] to work here" if Mr. French could not support the delay. The Secretary said that Mr. French agreed with this course of action. Mr. French recalled this meeting, indicating that the Secretary appeared to be under "a lot of stress." He said that the Secretary told him that Mr. Taverner wanted to "do the right thing" and that he, the Secretary, would resign if the appointment was not postponed. Mr. French said that he was taken aback by this."
Para 282	"Mr. Taverner indicated that he advised Mr. French that he wanted the appointment to be postponed while I completed this inquiry. He asked Mr. French about the logistics of communicating his decision and Mr. French suggested that Mr. Taverner get in touch with Mr. Froggatt. The exact timing of this discussion is unclear but Mr. French denied having spoken to Mr. Taverner on December 14."

DEMOCRACY WATCH

and

ONTARIO INTEGRITY COMMISSIONER

Court File No.: 548/19

Applicant

Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Divisional Court)**

Proceeding commenced at Toronto.

**FACTUM OF THE APPLICANT**

**LERNERS** LLP  
130 Adelaide Street West  
Suite 2400  
Toronto, ON M5H 3P5

**Rebecca Shoom** LS#: 68578G  
rshoom@lerners.ca  
Tel: 416.601.2382  
Fax: 416.601.4185

Lawyers for the Applicant