Court File No.: COA-23-CV-0858

COURT OF APPEAL FOR ONTARIO

BETWEEN:

DEMOCRACY WATCH

Applicant
(Appellant)

- and -

ONTARIO INTEGRITY COMMISSIONER

Respondent
(Respondent in Appeal)

FACTUM OF THE APPELLANT

August 17, 2023

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PART I: APPELLANT AND COURT APPEALED FROM

1. The Appellant, Democracy Watch, is an independent, not-for-profit advocacy organization with no personal or pecuniary interest in the matters at issue. Democracy Watch has a well-established history of raising and advancing issues in the broader public interest and for the benefit of the public.

2. In this matter, Democracy Watch raises issues in relation to the public's interest in ensuring that lobbyists' relationships and interactions with public officials are transparent and ethical.

3. Democracy Watch brought nine separate applications for judicial review that were considered together (the "Applications"). The Applications concern nine final decisions by the Respondent Ontario Integrity Commissioner ("OIC") as Registrar under the *Lobbyists Registration Act, 1998*, S.O. 1998, c. 27, Sched. (the "*LRA*"), including the first-ever decisions considering the conflict-of-interest prohibitions in s. 3.4 of the *LRA*.

4. Democracy Watch appeals from two decisions of the Divisional Court denying it public interest standing to advance these Applications.

5. By decision dated November 9, 2021, the Divisional Court, per the Motions Judge sitting alone, granted the OIC's motion to quash the Applications on the basis that Democracy Watch did not meet parts of the test for public interest standing. Specifically, the Motions Judge ruled it was plain and obvious that none of the Applications raised a serious justiciable issue and that the Applications were not an effective means to bring the issues before the courts (the "Decision to Quash").

6. By decision dated August 18, 2022, a three-judge panel of the Divisional Court dismissed Democracy Watch's motion to set aside the Decision to Quash, thereby affirming the Motion Judge's decision (the "Decision to Uphold").

PART II: OVERVIEW

7. The *LRA* aims to prevent secret, unethical lobbying in order to maintain government integrity, including through enforcement and penalty measures designed to ensure lobbyists comply with these provisions and do not undermine the integrity of decision-making by provincial politicians and Government of Ontario officials.

8. The public has an undeniable interest in knowing who is influencing their elected officials and whether the lobbying is being done in an ethical manner—which the *LRA* addresses through its transparency requirements and conflict-of-interest prohibition.

9. Democracy Watch's Applications, therefore, raise serious issues of broad public importance that go to the core of responsible government and democratic legitimacy.

10. Three of Democracy Watch's nine Applications allege that the OIC has unreasonably interpreted and applied the conflict-of-interest prohibition in the *LRA* by ruling that an obvious conflict of interest does not meet the statutory threshold. The remaining six Applications challenge the OIC decisions declining to penalize some lobbyists who violated the *LRA*'s conflict-of-interest or transparency provisions even though the OIC penalized other lobbyists who violated the *LRA* in the same ways.

11. Democracy Watch brought its Applications to bring judicial scrutiny to bear on these unreasonable decisions. Democracy Watch sought public interest standing to do so,

given that no lobbyist who obtains a favourable outcome from the OIC would seek a judicial review and ask for a less favourable finding.

12. The Divisional Court declined to grant Democracy Watch public interest standing, ruling that none of the Applications raised a serious justiciable issue and that they were not a reasonable and effective means to bring the matter before the courts (the first and third prongs of the test for public interest standing).

13. Democracy Watch respectfully submits that the Divisional Court erred in considering and applying the first and third prongs of the test for public interest standing. The Divisional Court failed to take the flexible and purposive approach to the test, as mandated by the Supreme Court of Canada.

14. The Divisional Court's rulings established a new, unreasonably rigid approach to the test in Ontario and thereby set a precedent that may be used to deny future legitimate requests for public interest standing in this Province.

15. The OIC conceded that Democracy Watch has a genuine interest in the matters (the second prong of the test for public interest standing), and the Decision to Quash ruled that Democracy Watch's Applications should not be dismissed on a preliminary basis for not raising justiciable issues or for any delay in filing.

16. The Divisional Court failed to find that Democracy Watch's Applications raised even one serious justiciable issue, despite the fact that these Applications concern issues including the first-ever instances of the OIC interpreting and applying the *LRA*'s conflict-of-interest provisions in public rulings.

17. The Divisional Court also did not explain why Democracy Watch's allegation that the OIC has a structural reasonable apprehension of bias was not a serious justiciable issue.

18. It is essential to the public's confidence in the functioning of their democracy that individuals who lobby Provincial parliamentarians and government employees do so ethically and transparently. It was an error in principle for the Divisional Court to mischaracterize and misapprehend the Applications as being about individual matters with no broader public implications.

19. The Divisional Court then ruled that the Applications were not a reasonable and effective means to bring the matters before the courts. The Divisional Court placed undue focus on the potential adverse impact on the individual lobbyists who are the subjects of the OIC decisions impugned by Democracy Watch.

20. The Divisional Court failed to give any weight to the fact that no lobbyist would ever seek to judicially review a finding that was favourable to them and that the court has myriad tools available to protect the interests of the individual lobbyists.

21. The failure to give sufficient weight to all relevant factors and instead elevate a single factor—the interests of individual lobbyists—as paramount and dispositive is also an error in principle.

22. This appeal is very similar to that of the Council of Canadians with Disabilities (the "CCD") regarding the first-instance ruling in *MacLaren*, which was found by the British Columbia Court of Appeal and the Supreme Court of Canada to have erred in law and principle by denying the CCD public interest standing.

***MacLaren v. British Columbia (Attorney General)*, 2018 BCSC 1753. ["*MacLaren*]**

***Council of Canadians with Disabilities v. British Columbia (Attorney General)*, 2020 BCCA 241, at paras 104–15.**

***British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27.**

23. Both the Decision to Quash and the Decision to Uphold made the same errors as did the decision denying the CCD public interest standing in *MacLaren*: failure to apply the test for public interest standing in the required flexible manner in order to ensure an avenue for challenging state action in court and upholding the rule of law.

24. The *MacLaren* errors were made on the questions of serious justiciable issue and reasonable and effective means to bring the matter before the courts, as were the Divisional Court's errors in this matter.

***Council of Canadians with Disabilities v. British Columbia (Attorney General)*, 2020 BCCA 241, at paras 104–15. ["*CCD* – BCCA"]**

25. The Divisional Court also mischaracterized and/or ignored Federal Court ("FC") and Federal Court of Appeal ("FCA") rulings that granted Democracy Watch public interest standing to challenge decisions of federal lobbying and ethics commissioners that are highly analogous to the OIC's decisions being challenged in this matter.

PART III: SUMMARY OF FACTS

A. The Legislative Framework

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

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

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

(iii) If the OIC finds the lobbyist violated the *LRA*, s. 17.6 states that the OIC shall give the lobbyist notice of that finding, reasons for the finding, and notice of any penalty imposed under the OIC's statutory power in s. 17.9.

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

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

***Lobbyists Registration Act, 1998*, S.O. 1998, c. 27, Sched. , s. 10, 17.5–17.19, and 18.**

B. The OIC's Many Secret Enforcement Decisions Have Not Been Adjudicated

27. According to the OIC's 2019–20 Annual Report, the OIC made enforcement decisions under the *LRA* in 335 situations during fiscal year 2019–20. However, the OIC

concluded investigations and issued a public decision in only 29 of the 335 situations, resulting in the 24 final decisions published in the Annual Report (some of the decisions covered the activities of more than one lobbyist). No other information is provided in the Annual Report about 306 of the OIC's enforcement decisions.

Appeal Book and Compendium, Tab 19, Affidavit of Duff Conacher sworn March 18, 2021, para 4 and Exhibit "A", pg. 200 and 203–66.

28. Democracy Watch is challenging nine of the 24 reported decisions. For ease of reference, Democracy Watch created a document numbering the decisions in the Annual Report. The numbers and corresponding court file numbers are as follows:

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

Appeal Book and Compendium, Tab 19, Affidavit of Duff Conacher sworn March 18, 2021, para 6 and Exhibit "B", pg. 201 and 268–75.

29. In making five of these nine decisions, the OIC interpreted and applied s. 3.4 of the *LRA* publicly for the first time. These decisions set precedents that the OIC very likely also applied to at least some of the other 306 secret *LRA* enforcement decisions, likely has

applied to all similar situations that have arisen since April 2020, and likely will apply to future OIC enforcement decisions.

30. Three of the nine Applications challenge the OIC's interpretation of s. 3.4 in decisions 6, 7 and 10 in the above chart. In each decision, the OIC found a lobbyist or lobbyists did not violate s. 3.4 of the *LRA*, which prohibits a lobbyist from knowingly placing a public officeholder in a real or potential conflict of interest as defined in the *MIA*.

31. The OIC also set precedents in six of the nine decisions concerning how the OIC will exercise the discretion to impose any penalty on a lobbyist who has violated the *LRA*.

32. Six of the nine applications challenge decisions 5, 13, 14, 17, 20 and 23 set out in the above chart, all of which are decisions by the OIC that found a lobbyist in violation of the *LRA*. Decisions 13 and 20 concern violations of s. 3.4, while the other decisions concern violations of the *LRA*'s transparency provisions that require registration and disclosure of lobbying activities.

33. These six Applications challenge whether the OIC is reasonably exercising his discretion to penalize or is exercising it arbitrarily and unreasonably because, despite conducting these investigations and finding the lobbyists violated the *LRA*, the OIC decided not to penalize any of the lobbyists. The OIC made these six decisions not to penalize even though the lobbyists violated the *LRA* in exactly the same way or an equally serious way (and their violations were mitigated in exactly the same ways) as the one lobbyist whom the OIC penalized in Decision 1 of his 2019–20 Annual Report.

Appeal Book and Compendium, Tab 19, Affidavit of Duff Conacher sworn March 18, 2021, para 6 and Exhibit "B", pg. 201 and 269.

34. All nine Applications also raise the serious issue of whether there was a reasonable apprehension of bias on the part of the OIC at the time he made the nine rulings, given that the rulings were all about lobbyists alleged to have violated the *LRA* in their interactions with politicians who had the power to decide whether the OIC would be re-appointed for a second term in office.

35. The Applications raise serious, systemic issues concerning the proper interpretation, application, and enforcement of key provisions in the *LRA* that apply in hundreds of situations ruled on by the OIC annually. None of these issues have been adjudicated.

PART IV: ISSUES AND LAW AND AUTHORITY

36. Democracy Watch proposes the following questions for determination:

    i. **Issue 1:** What is the standard of review?

    ii. **Issue 2:** Did the Divisional Court err in finding it was plain and obvious that the Applications did not raise any serious issues of public importance?

    iii. **Issue 3:** Did the Divisional Court err in finding it was plain and obvious the Applications were not a reasonable or effective way to bring these issues before the courts?

(i) The Standard of Review

37. Public interest standing is discretionary, and so the standard of review is whether the motions judge "made a palpable and overriding error or an error in principle".

***Trillium Motor World Ltd. v. General Motors of Canada Limited*, 2014 ONCA 497, at para 24.**

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

38. Such errors include instances of the motions judge misdirecting themselves, giving no or insufficient weight to relevant factors, and misapprehending the evidence.

***Brown v. Hanley*, 2019 ONCA 395, at para 24.**
***McLean v. McLean*, 2013 ONCA 788, at para 44.**

(ii) The Divisional Court erred in finding it was plain and obvious that the Applications did not raise any serious justiciable issues

39. All of Democracy Watch's Applications raise important legal issues with broad implications concerning the interpretation, application, and enforcement of key provisions of the *LRA*, as well as issues about the OIC's structural apprehension of bias.

40. The *LRA* aims to prevent secret, unethical lobbying in order to maintain government integrity, including through enforcement and penalty measures designed to ensure lobbyists comply with these provisions and do not undermine the integrity of decision-making by provincial politicians and Government of Ontario officials.

41. The reasons for the *LRA*'s disclosure and conflict-of-interest provisions are obvious: those who seek to influence public office holders must do so in a transparent manner that avoids conflicts of interest because secret, unethical lobbying is harmful to public confidence in the integrity of government.

42. These are clearly serious issues of broad public importance. However, the Decision to Quash ruled it was plain and obvious that none of the nine Applications raise even one serious issue that has broad implications.

43. Instead, the Decision to Quash mischaracterizes each of them as nothing more than "a challenge to decisions by the [OIC] respecting the conduct of individual lobbyists" that "does not raise a serious issue regarding the interpretation of the *LRA*."

Appeal Book and Compendium, Tab 4, Reasons of Favreau J., November 9, 2021, para 35, pg. 26.

44. The Decision to Quash also inaccurately ruled that the Applications are focused only "on the outcome in each of the nine matters at issue," and that they speculate "the [OIC] is being too lenient in applying the *LRA*" and "[w]ith very little information, the applicant speculates that the [OIC] is not properly exercising his discretion when investigating and disposing of complaints."

Appeal Book and Compendium, Tab 4, Reasons of Favreau J., November 9, 2021, para 37, pg. 27.

45. In reaching and maintaining these conclusions, the Divisional Court erred in principle by misapprehending the nature of the issues raised in the Applications.

46. While it is true (and unfortunate) that the OIC's one- or two-paragraph public decisions are vague and provide very little information, Democracy Watch does not speculate that the OIC is unreasonably interpreting and applying key provisions of the *LRA* or not properly exercising the discretion to enforce the *LRA*.

47. Instead, each of the nine Notices of Application sets out clearly and specifically how the OIC is unreasonably interpreting, applying, and enforcing the *LRA* in serious, systemic ways that have broad implications beyond each situation addressed in each ruling.

48. Three of the Applications seek review of the OIC's first-ever public rulings interpreting s. 3.4 of the *LRA*, which prohibits a lobbyist from placing a public office holder in a real or potential conflict of interest. The OIC's three rulings set precedents concerning different aspects of the interpretation of s. 3.4—one of the key statutory provisions

aimed at ensuring the integrity of Ontario government policymaking—and these precedents will be applied by the OIC in the future when ruling on similar situations.

49. Six of the Applications seek review of whether the OIC is properly exercising the statutory discretion provided for in the *LRA* to penalize lobbyists who have violated the *LRA*, given that the OIC has applied penalties for the same or analogous violations very inconsistently, and almost always failed even to identify lobbyists who have violated the *LRA* in serious ways.

50. All nine Applications raise the question of whether the OIC had a reasonable apprehension of bias when issuing his nine final rulings, and none of the Applications challenge or seek review of any factual findings made in any of the OIC's rulings.

51. A serious issue is an "important one" that is "far from frivolous". Once an application is found to raise "at least one serious issue", it is not necessary to parse the pleadings further under the public interest standing test.

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

52. As the Supreme Court has stated, preserving and protecting government integrity is an "important goal" and is "crucial to the proper functioning of a democratic system."

***R v. Hinchey*, 1996 CanLII 157 (SCC), at paras 13 and 15–6.**

53. Democracy Watch's nine Applications, whether taken separately or together, all raise serious legal issues that align with this important goal.

54. The Applications concern the reasonableness of the OIC's interpretation of the key conflict-of-interest provisions in the *LRA*, the reasonableness of the OIC's exercise of

discretion in not penalizing lobbyists who have violated the *LRA*, and whether the OIC's decisions are tainted by institutional bias.

55. Each of these issues and, therefore, each of Democracy Watch's Applications are far from frivolous; they are serious justiciable issues that satisfy this part of the public interest standing test. The Divisional Court erred in principle by concluding otherwise.

The Divisional Court misapprehended or ignored analogous federal rulings

56. A significant part of the Divisional Court's error is rooted in the failure to give sufficient weight to both the purpose of the *LRA* and the fact the FC granted Democracy Watch public interest standing to pursue two applications for judicial review of analogous rulings by the federal Commissioner of Lobbying (the "Federal Commissioner") interpreting provisions of federal lobbying legislation that are analogous to s. 3.4 of the *LRA*.

***Democracy Watch v. Canada (Attorney General)*, 2021 FC 613, at paras 21, 37–9, 46, 58, and 71–4. ["*Democracy Watch* (2021-1)"]**

57. The Divisional Court ignored, or at least gave seriously insufficient weight to this ruling and other analogous federal rulings that have granted Democracy Watch standing in other similar judicial review matters.

58. While the federal courts do not bind the Divisional Court, their decisions are highly instructive and persuasive in light of the paucity of such cases in Ontario, where the decisions of the OIC acting under the *LRA* have never been judicially considered.

59. Rather than give sufficient weight to these federal rulings, the Decision to Quash mischaracterized the FC's ruling in *Democracy Watch* (2021-1), inaccurately claiming

that this ruling did not grant Democracy Watch public interest standing to challenge the interpretation of federal ethical lobbying rules by the Federal Commissioner when, in fact, it did. The Decision to Uphold ignored this error.

Appeal Book and Compendium, Tab 4, Reasons of Favreau J., November 9, 2021, para 36, pg. 26–7.

***Democracy Watch v. Canada (Attorney General)*, 2021 FC 613, at paras 21, 37–9, 46, 58, and 71–4.**

60. The Decision to Quash claimed, incorrectly, that Democracy Watch was granted standing by the FC in *Democracy Watch* (2021-1) to judicially review the rulings by the Federal Commissioner only with respect to the definition of the word "staff" in Rule 9 of the *Lobbyists' Code of Conduct* (the "*Code*") pursuant to the *Lobbying Act*.

Appeal Book and Compendium, Tab 4, Reasons of Favreau J., November 9, 2021, para 36, pg. 26–7.

***Lobbyists' Code of Conduct (2015)* under *Lobbying Act* (R.S.C., 1985, c. 44 (4th Supp.)), r. 9.**

61. In fact, the FC in *Democracy Watch* (2021-1) rejected the respondent's motion to strike and granted Democracy Watch public interest standing to pursue judicial reviews of whether the Federal Commissioner properly interpreted and applied federal conflict-of-interest rules for lobbyists in Rule 6 and Rule 9 of the *Code*.

***Democracy Watch v. Canada (Attorney General)*, 2021 FC 613, at paras 12–14, 21–46, 58, and 71–4.**

***Lobbyists' Code of Conduct (2015)* under *Lobbying Act* (R.S.C., 1985, c. 44 (4th Supp.)), r. 6 and r. 9.**

62. The fact that the FC permitted Democracy Watch to seek judicial review of the Federal Commissioner's interpretation of Rule 6 of the *Code* was confirmed by the FC's

subsequent ruling in the same matter. This ruling was before the panel of the Divisional Court that made the Decision to Uphold, but the panel erroneously ignored it.

***Democracy Watch v. Canada (Attorney General)*, 2021 FC 1417, paras 3–6.**

63. The FC also ruled in *Democracy Watch* (2021-1) that the interpretation of conflict-of-interest rules in the federal *Code* by the Federal Commissioner is a serious issue.

***Democracy Watch v. Canada (Attorney General)*, 2021 FC 613, at paras 23–46.**

64. The FCA similarly ruled that interpretation and enforcement of conflict-of-interest rules is a serious issue and granted Democracy Watch standing to pursue judicial reviews of federal Ethics Commissioner decisions that interpret and apply those rules.

***Democracy Watch v Canada (Attorney General)*, 2018 FCA 194, at para 18.**

Details concerning how each of nine Applications raise serious legal issues

65. In this matter, Applications 632/20, 633/20, and 634/20 challenge the first three public decisions issued by the OIC that interpret and apply s. 3.4 of the *LRA*. These three Applications would be the first time this issue is adjudicated.

66. Determining whether the OIC is reasonably interpreting s. 3.4 unquestionably has broader implications beyond the specific situation in which that interpretation occurred. The OIC's interpretation affects the integrity of decision-making and policy-making by all Ontario politicians and government officials, and also sets a precedent for all future OIC decisions concerning similar alleged violations of the *LRA*.

67. All three of these Notices of Application (particularly sub-parts 2.A(f)–(g) concerning the legislative context, sub-parts 2.B(c)–(d) concerning the OIC's decision, and sub-parts 2.C(a)–(k) concerning Democracy Watch's legal position) make it abundantly

clear that the three Applications raises the very serious legal issue of whether the OIC is properly interpreting s. 3.4 of the *LRA*:

(i) Sub-part 2.C(g) of the Notice of Application in 632/20 clearly states that the OIC's decision at issue "was an incorrect and unreasonable interpretation and application of section 3.4 of the *LRA* to the lobbyist's actions."

(ii) Sub-parts 2.C(e)–(g) together make clear that the Application in 632/20 specifically challenges the part of the OIC's interpretation of s. 3.4 concerning what campaigning activities by a lobbyist create a real or potential conflict of interest as defined in ss. 2–4 of the *MIA*. This is plainly a serious question of law with broad implications.

(iii) Sub-part 2.C(g) of the Notice of Application in 633/20 also clearly states that the OIC's decision at issue "was an incorrect and unreasonable interpretation and application of section 3.4 of the *LRA* to the lobbyist's actions."

(iv) Sub-parts 2.C(e)–(g) together make clear that the Application in 633/20 challenges the part of the OIC's interpretation of s. 3.4 concerning what period of time would have to pass before the campaigning that the lobbyist did for the politicians would no longer create a real or potential conflict of interest as defined in ss. 2–4 of the *MIA*. This is plainly another serious legal issue with broad implications.

(v) Sub-part 2.C(g) of the Notice of Application in 634/20 again states that the OIC's decision at issue "was an incorrect and unreasonable interpretation and application of section 3.4 of the *LRA* to the lobbyist's actions."

(vi) Sub-parts 2.C(e)–(g) make clear that the Application in 634/20 specifically challenges the part of the OIC's interpretation of s. 3.4 concerning what fundraising activities by a lobbyist for a politician create a real or potential conflict of interest as defined in ss. 2–4 of the *MIA*. This is plainly an additional serious question of law with broad implications.

Appeal Book and Compendium, Tabs 6–10, Notices and Amended Notices of Application in File Nos. 632/20, 633/20, 634/20, pg. 41–5, 53–7, 65–9, 77–81, and 90–5.

68. Applications 644/20, 645/20, 646/20, 647/20, 648/20 and 660/20 all challenge decisions by the OIC not to penalize lobbyists who violated the *LRA*.

69. In all of the Notices of Application for these six Applications, sub-parts 2.C(a)–(g) make it abundantly clear that each Application concerns the very serious legal issue of the OIC arbitrarily and inconsistently exercising the discretion to penalize (or not) lobbyists who violate the *LRA*.

Appeal Book and Compendium, Tabs 11–16, Notices of Application in File Nos. 644/20, 645/20, 646/20, 647/20, 648/20 and 660/20, pg. 105–6, 117–8, 129–30, 141–2, 154–6, and 167–9.

70. These six Applications are based on the fact that the OIC decided in 2019–20 not to penalize the six lobbyists involved, even though they violated the *LRA* in the same or in an equally serious manner (and with the same mitigating circumstances) as did the one lobbyist the OIC decided to penalize in 2019–20, and the three lobbyists the OIC penalized in decisions issued in 2018–19.

71. The Appellant's six Applications would be the first time this serious legal issue of whether the OIC is enforcing the *LRA* arbitrarily is adjudicated.

72. In all nine of the Appellant's Notices of Application, sub-parts 2.C(l)–(o) explicitly raise the Appellant's serious allegation that there was a reasonable apprehension of bias on the part of the OIC when the OIC made the nine impugned decisions at issue.

Appeal Book and Compendium, Tabs 6–16, Notices and Amended Notices of Application in File Nos. 632/20, 633/20, 634/20, 644/20, 645/20, 646/20, 647/20, 648/20 and 660/20, pg. 45–6, 57–8, 69–70, 82, 95, 107–8, 119–20, 131–2, 143–4, 156–7, and 170–1.

73. The Decision to Quash acknowledged this issue but did not even consider, let alone decide, whether the bias issue is serious. That issue alone ought to have been considered a serious issue sufficient to allow the Applications to meet the first prong of the test for public interest standing, which only requires there to be one serious issue in order for the Applications to satisfy this branch.

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

74. The Divisional Court simply neglected to consider whether the issue of institutional bias raised in each of the nine Applications was a serious issue. There is no explanation for this omission, and it constitutes an error of law.

75. In sum, all nine of the Notices of Application articulate important legal issues with broad implications concerning the proper interpretation and application of key provisions of the *LRA*, and the federal courts (including at the appellate level) have found that these are serious issues.

76. Although federal rulings do not bind Ontario courts, the FC and FCA are bound by the same Supreme Court jurisprudence concerning the test for public interest standing, and

it was erroneous for the Divisional Court to ignore very relevant rulings concerning that test in the context of conflict-of-interest legislation.

(iii) The Divisional Court erred in finding it was plain and obvious the Applications were not a reasonable or effective way to bring the issues before the courts

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

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

***Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, at para 20.**

78. Ultimately, the "whole point" of public interest standing "is for the court to use its discretion, where appropriate, to allow more plaintiffs through the door". Using public interest standing "simply to bar access" is antithetical to that purpose.

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

***British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27, at paras 30, 33–4, 52–5 and 57.**

79. Using public interest standing to bar access is exactly what the Divisional Court did in this matter. That is particularly evident under the third prong of the test, which ought to be especially flexible but was applied as an inflexible bar.

80. The Divisional Court effectively required Democracy Watch to show that its applications are the *only* reasonable and effective means of bringing the issues before

the courts. However, the Supreme Court jurisprudence requires that the Applications be "*a* reasonable and effective means of bringing the case to court, regardless of whether other reasonable and effective means exist".

***British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27, at para 94.**

81. In any event, contrary to the findings in the Decision to Quash, Democracy Watch's nine Applications are both a reasonable and effective way to bring these important issues before the courts and are very likely the only way to do so.

82. In the nine impugned decisions, the OIC found all the lobbyists involved were either not in violation of the *LRA* or should not be penalized for having violated the *LRA*. It is self-evident that a lobbyist who is found not guilty or who is not penalized will have no incentive to challenge the OIC's decision. In fact, none of the lobbyists challenged the OIC's decisions.

83. The Supreme Court is clear that courts are required to determine whether there are practical prospects, rather than mere "theoretical possibilities", that directly affected individuals will bring the matters to court.

***British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27, at paras 92–3.**

84. The Divisional Court did not even consider this point, despite the fact that there are no practical prospects that directly affected individuals will pursue the matters in court. None have done so in the seven years since the *LRA* provisions came into force.

85. This is a situation where "there is no hint that any other such person is even interested in raising this issue for consideration by the courts", which weighs heavily in favour of granting public interest standing under the third prong of the test.

***Western Canada Wilderness Committee v. British Columbia (Oil and Gas Commission)*, 2014 BCSC 1919, at paras 70–2.**

86. This is especially true because the Applications raise very important issues of statutory interpretation and government integrity and transparency that have never been adjudicated and will not otherwise be adjudicated.

87. At a minimum, the Divisional Court was required to weigh this factor against the interests of the individual lobbyists who would potentially be affected if these matters proceed to be judicially reviewed.

88. However, the Decision to Quash reveals a failure to do so. Instead, the analysis collapses the third prong of the test into a narrow focus that gave undue weight to the privacy interests of these lobbyists—without proper regard to whether steps could be taken to protect those interests while allowing the Applications to proceed.

Appeal Book and Compendium, Tab 4, Reasons of Favreau J., November 9, 2021, para 39–44, pg. 27–8.

89. This was an error in principle, as it disregards that third-party interests are but one factor to be considered. The Divisional Court's focus on the lobbyists' interests led to the following key considerations of the third prong of the test being overlooked:

> 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.

***Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, at paras 50–1.**

The Divisional Court ignored analogous Federal Courts rulings

90. The Divisional Court further erred on this point by failing to consider FC and FCA rulings that all allowed Democracy Watch to pursue judicial review of several final decisions by the federal Registrar of Lobbyists (one of the roles at the time of the federal Ethics Counsellor) and the Federal Commissioner—final decisions that are highly analogous to the nine impugned decisions of the OIC. In almost all of these federal cases, several years had passed since the Registrar of Lobbyists or the Federal Commissioner had rendered their decisions.

***Democracy Watch v. Canada (Attorney General)*, 2004 FC 969.**
***Democracy Watch v. Campbell*, 2008 FC 214.**
***Democracy Watch v. Campbell*, 2009 FCA 79.**
***Democracy Watch v. Canada (Attorney General)*, 2021 FC 613.**
***Democracy Watch v. Canada (Attorney General)*, 2021 FC 1417.**
***Democracy Watch v Canada (Attorney General)*, 2018 FCA 194.**

91. Given the Applications in this proceeding raise serious issues with broad implications concerning lawful action by government actors, this failure to even consider analogous proceedings from other courts is inexplicable.

92. These federal rulings were highly relevant for the Divisional Court to consider when weighing up the lobbyists' interests in not having matters re-opened after the passage of several months or even years.

The Divisional Court misapprehended statutory provisions concerning judicial review

93. The Divisional Court further erred in concluding that permitting Democracy Watch to judicially review the matters by way of public interest standing conflicted with the statutory scheme of the *LRA*.

94. This conclusion was the result of the Divisional Court misapprehending the statutory scheme, particularly s. 17.8 of the *LRA*, which sets a timeline for affected lobbyists to seek judicial review.

***Lobbyists Registration Act, 1998*, S.O. 1998, c. 27, Sched. , s. 17.8.**

95. The Decision to Quash stated this provision "suggests that only lobbyists are to have standing to challenge a decision of the [OIC] under the [*LRA*]." No evidence, including of legislative history, was advanced or cited in support of this conclusion.

Appeal Book and Compendium, Tab 4, Reasons of Favreau J., November 9, 2021, para 43, pg. 28.

96. The availability of judicial review is established in the *Judicial Review Procedure Act* (the "*JRPA*") and a grant of public interest standing is in the discretion of the courts. If the legislature intended to derogate from the *JRPA* and oust the availability of public interest standing at common law then it would have clearly said so.

***Judicial Review Procedure Act*, R.S.O. 1990, c. J.1.**
***Children's Aid Society of Waterloo v. D.D.*, 2011 ONCA 441, at para 45.**
***Douglas v. Canada (Attorney General)*, 2014 FC 299, at para 101.**

97. The legislature did not say so and, therefore, it is presumed that the legislature did not intend to change the common law to remove the availability of public interest standing.

***Demers v. Monty*, 2012 ONCA 384, at para 32.**
***Saskatchewan Labour Relations Board v SCH Maintenance Services Ltd.*, 2021 SKCA 151, at paras 62–3.**

98. Setting a timeline for affected lobbyists to seek judicial review in s. 17.8 does not clearly (let alone automatically) oust the availability of public interest standing, and it was erroneous for the Divisional Court to rule otherwise.

99. In support of this erroneous conclusion, the Decision to Quash cites *DW v. OIC* – 2020, an earlier decision by the Divisional Court involving the same parties. This was an error in principle, as that decision addressed the *Public Service of Ontario Act* ("*PSOA*"), which is an entirely different statutory scheme that establishes and regulates an employer-employee relationship between the OIC and Ontario government employees.

***Public Service of Ontario Act*, 2006, S.O. 2006, c. 35, Sched. A.**
***Democracy Watch v. Ontario Integrity Commissioner*, 2020 ONSC 6081. ["*DW v. OIC* – 2020"]**

100. Lobbyists under the *LRA* are not employees of the OIC, nor of the Government of Ontario, and so this decision has no useful application to the *LRA*'s scheme.

101. The *PSOA* sets out a limited number of ways in which an inquiry under that Act may be triggered, none of which mention the public. The *LRA*, on the other hand, contains no such limitations ousting the public from its statutory mechanism.

***Public Service of Ontario Act*, 2006, S.O. 2006, c. 35, Sched. A., ss. 65(1)–(4) and ss. 69(1)–(4).**

102. The Decision to Quash further states *DW v. OIC (2020)* "held that it would undermine a similar statutory scheme in that case to allow members of the public to challenge a decision where a statutory provision states that only the subject of an inquiry could bring an application for judicial review." In fact, the *PSOA* does not contain any provision concerning the rights of anyone to bring an application for judicial review.

Appeal Book and Compendium, Tab 4, Reasons of Favreau J., November 9, 2021, para 43, pg. 28.

The Divisional Court misapprehended the Applications and disregarded the prospect of confidentiality orders

103. The Decision to Quash purports to identify another inconsistency between the *LRA* and judicial review via public interest standing, stating that "[a]llowing these applications for judicial review to go forward would inevitably conflict with" the confidentiality protections in the *LRA*, which "provides that the lobbyists under investigation are not to be identified unless the [OIC] finds misconduct and determines that public identification is warranted". This is because, the Decision to Quash reasoned, Democracy Watch "seeks the full records upon which the [OIC] based his decisions."

Appeal Book and Compendium, Tab 4, Reasons of Favreau J., November 9, 2021, para 42, pg. 27.

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

105. Democracy Watch made clear to the Divisional Court (in both its written and oral submissions) that it is not seeking disclosure of the identity of any of the lobbyists involved as part of the judicial review process.

106. The focus of the Applications is not on these individuals but rather on the serious legal issues concerning whether the OIC is properly interpreting, applying, and enforcing key provisions in the *LRA*.

107. As Democracy Watch also stated, if a lobbyist applied for judicial review of a decision of the OIC finding the lobbyist in violation of the *LRA* but not naming the lobbyist, the judicial review would necessarily proceed without naming the lobbyist. The Decision to

Quash provided no reason as to why the same process could not be followed in Democracy Watch's Applications.

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

109. The FC made such a confidentiality order for judicial review applications in which Democracy Watch was granted public interest standing to challenge the Federal Commissioner's interpretation and application of Rules 6 and 9 of the *Code* in two separate decisions (which are, again, analogous applications to Democracy Watch's nine Applications at issue in this proceeding).

***Democracy Watch v. Canada (Attorney General)*, 2021 FC 1417, Order.**
***Lobbyists' Code of Conduct (2015)* under *Lobbying Act* (R.S.C., 1985, c. 44 (4th Supp.)), r. 6 and r. 9.**

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

111. The Divisional Court's failure to do so is an error in principle. The public interest standing test was deployed as a bar to access rather than in accordance with its purpose of allowing more litigants through the door.

112. The elevation of the interests of third parties above all other factors to be properly considered under the third prong of the test is also an error in principle; treating those

interest as a standalone determinative factor is contrary to the Supreme Court's clear direction that "the factors should be seen as interrelated considerations to be weighed cumulatively, not individually, and in light of their purposes".

***Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, at paras 20 and 36.**

113. These errors, taken separately and together, provide further compelling reasons for this Honourable Court to grant this appeal.

(iv) Conclusion

128. These Applications raise serious issues with broad implications for government transparency, political integrity, and the proper interpretation, application and enforcement of key provisions of the *LRA*. These issues have not been adjudicated by any Ontario court.

129. Democracy Watch has a genuine interest in the matter (as conceded by the OIC), and these Applications are a reasonable and effective way—in fact, they are the only realistic way—to bring these important issues before the courts.

130. However, by quashing Democracy Watch's Applications on a preliminary basis for lack of standing, the Divisional Court has barred Democracy Watch from ever advancing these issues for consideration on their merits before a full panel of that court.

114. The Divisional Court effectively established a new, much stricter test for public interest standing that is totally at odds with binding Supreme Court jurisprudence and that pays no heed to ensuring access to justice and an avenue for challenging state action and upholding the rule of law.

***British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27, at paras 30, 33–4, 52–5 and 57.**

131. The Divisional Court's approach is contrary to the Supreme Court's clear and repeated direction that the public interest standing test must be applied flexibly and purposively.

132. This shift in the law sets a precedent that is applicable to every person and organization in Ontario that will seek public interest standing to judicially review the conduct of administrative state actors in the future. This departure from the well-established test for public interest standing is a serious matter of public importance that concerns access to justice and upholding legality and the rule of law.

133. If this appeal is not granted, the result will be that the OIC is not subject to judicial oversight and cannot be held accountable for the exercise of, or failure to exercise, its statutory mandate to interpret, apply, and enforce provisions of the *LRA*.

134. No court has previously interpreted the nature and scope of the OIC's powers pursuant to the *LRA* that are at issue in this proceeding. There is no meaningful precedent on which the Divisional Court's conclusions are based.

135. It is of public importance that these issues be determined correctly, and with proper consideration on a full evidentiary record before a full panel of the Divisional Court.

136. This Honourable Court must, respectfully, ask the question the Divisional Court ignored: if Democracy Watch's Applications are not heard by the courts, how else will the serious issues raised in the Applications ever be brought before a court for the scrutiny to which the rest of the administrative state is inherently subject?

137. If the courts will not judicially review these few public decisions to determine whether the OIC is misinterpreting and misapplying these key *LRA* provisions, the OIC can freely continue to enforce the *LRA* unreasonably in perpetuity—thereby permitting secret, unethical lobbying by hundreds of lobbyists.

138. This would seriously undermine the integrity of the Government of Ontario's decision-making and policy-making functions. This is corrosive to public faith in democracy.

139. As the Decision to Uphold correctly noted, "it is clear that this is public interest litigation brought in good faith to advance the rights of citizens in our democracy."

Appeal Book and Compendium, Tab 5, Reasons of ACJSC McWatt, Molloy and Chalmers JJ., August 19, 2022, para 11, pg. 35.

140. Such litigation should not be extinguished at the preliminary stage through a complete misapplication of the well-established test for public interest standing. It is crucial that public organizations or persons have the ability bring serious matters of public importance before the courts for a full hearing on judicial review.

141. In this case, Democracy Watch should have public interest standing to seek judicial review of the OIC's precedent-setting decisions concerning the interpretation and enforcement of statutory provisions that are key to protecting government integrity.

142. The interests of justice favour granting this appeal and allowing the Applications for judicial review to proceed to a full hearing on the merits at the Divisional Court.

PART IV: ORDER SOUGHT

143. Democracy Watch respectfully requests the following:

i. An order quashing the decisions of the Divisional Court dated November 9, 2021, and August 18, 2022;

ii. An order granting the Appellant public interest standing in all nine Applications, and directing that the Applications be heard by a panel of the Divisional Court;

iii. An order that no costs be awarded to either party in this appeal, as this matter is novel public interest litigation for which a "no costs" order is appropriate, and;

iv. Such further and other relief as this Honourable Court may deem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 17th DAY OF AUGUST, 2023

Nick Papageorge / Wade Poziomka
ROSS & McBRIDE LLP

Lawyers for the Appellant

CERTIFICATE OF COUNSEL

I, Nick Papageorge, lawyer for the Applicant (Appellant) herein, certify that:

a) No order under Rule 61.09(2) is required.

b) I estimate 1.5 hours will be required for the Appellant's oral argument, not including reply.

Nick Papageorge

Date: August 17, 2023

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SCHEDULE "A"
LIST OF AUTHORITIES

1. *MacLaren v. British Columbia (Attorney General)*, 2018 BCSC 1753
2. *Council of Canadians with Disabilities v. British Columbia (Attorney General)*, 2020 BCCA 241
3. *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27
4. *Trillium Motor World Ltd. v. General Motors of Canada Limited*, 2014 ONCA 497
5. *Alford v. Canada (Attorney General)*, 2019 ONCA 657
6. *Brown v. Hanley*, 2019 ONCA 395
7. *McLean v. McLean*, 2013 ONCA 788
8. *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45
9. *R v. Hinchey*, 1996 CanLII 157 (SCC)
10. *Democracy Watch v. Canada (Attorney General)*, 2021 FC 613
11. *Democracy Watch v. Canada (Attorney General)*, 2021 FC 1417
12. *Democracy Watch v Canada (Attorney General)*, 2018 FCA 194
13. *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2
14. *Western Canada Wilderness Committee v. British Columbia (Oil and Gas Commission)*, 2014 BCSC 1919
15. *Democracy Watch v. Canada (Attorney General)*, 2004 FC 969
16. *Democracy Watch v. Campbell*, 2008 FC 214
17. *Democracy Watch v. Campbell*, 2009 FCA 79
18. *Children's Aid Society of Waterloo v. D.D.*, 2011 ONCA 441
19. *Douglas v. Canada (Attorney General)*, 2014 FC 299
20. *Demers v. Monty*, 2012 ONCA 384
21. *Saskatchewan Labour Relations Board v SCH Maintenance Services Ltd.*, 2021 SKCA 151

22. *Democracy Watch v. Ontario Integrity Commissioner*, 2020 ONSC 6081

SCHEDULE "B"
TEXT OF RELEVANT STATUTES AND REGULATORY AUTHORITIES

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

Commissioner

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

Appointment

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

Selection by panel

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

Term of office

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

Selection by panel

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

Continuation in office

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

Transition

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

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

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

Lobbyists placing public office holders in conflict of interest

Consultant lobbyists

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

In-house lobbyists

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

Definition — conflict of interest, member of the Assembly

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

Definition — conflict of interest, other persons

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

Duty to file return, consultant lobbyists

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

Registrar

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

Investigation by registrar

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

Time limit

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

Refusal or cease to investigate

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

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

Referral instead of investigation

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

Suspension of investigation in case of criminal investigation or charge laid

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

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

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

Resumption of suspended investigation

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

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

Registrar's powers on investigation

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

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

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

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

Same

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

Protection under *Canada Evidence Act*

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

Court order

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

Privileges and right to counsel

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

Notice after investigation

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

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

(i) the alleged non-compliance,

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

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

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

Same

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

Same

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

Registrar's finding of non-compliance

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

(a) the finding of non-compliance;

(b) any penalty imposed under section 17.9; and

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

Notice

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

Same

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

Judicial review

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

Penalties

Registrar's powers after finding of non-compliance

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

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

ii. A description of the non-compliance.

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

Registrar's powers after conviction

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

Publication in registry

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

Limitation

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

Delaying implementation of penalty

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

Confidentiality

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

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

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

Exceptions

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

(a) to conduct an investigation under section 17.1;

(b) to refer a matter under section 17.2;

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

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

Same

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

(a) in a prosecution for perjury;

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

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

Annual report

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

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

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

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

***Lobbyists' Code of Conduct (2015)* under *Lobbying Act* (R.S.C., 1985, c. 44 (4th Supp.))**

Conflict of interest

6. A lobbyist shall not propose or undertake any action that would place a public office holder in a real or apparent conflict of interest.

   In particular:

- **Preferential access**

    7. A lobbyist shall not arrange for another person a meeting with a public office holder when the lobbyist and public office holder share a relationship that could reasonably be seen to create a sense of obligation.
    8. A lobbyist shall not lobby a public office holder with whom they share a relationship that could reasonably be seen to create a sense of obligation.

- **Political activities**

    7. When a lobbyist undertakes political activities on behalf of a person which could reasonably be seen to create a sense of obligation, they may not lobby that person for a specified period if that person is or becomes a public office holder. If that person is an elected official, the lobbyist shall also not lobby staff in their office(s).

- **Gifts**

    7. To avoid the creation of a sense of obligation, a lobbyist shall not provide or promise a gift, favour, or other benefit to a public office holder, whom they are lobbying or will lobby, which the public office holder is not allowed to accept.

***Public Service of Ontario Act, 2006*, S.O. 2006, c. 35, Sched. A, ss. 65(1)–(4) and ss. 69(1)–(4)**

Role of ethics executive

Questions for ethics executive

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. 2006, c. 35, Sched. A, s. 65 (1).

Same

(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. 2006, c. 35, Sched. A, s. 65 (2).

Duty to notify

(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. 2006, c. 35, Sched. A, s. 65 (3).

Inquiries

(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. 2006, c. 35, Sched. A, s. 65 (4).

Role of ethics executive

Questions for ethics executive

69 (1) A public servant or former public servant who works or, immediately before ceasing to be a public servant, worked in a minister's office 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. 2006, c. 35, Sched. A, s. 69 (1).

Same

(2) A supervisor of a public servant who works in a minister's office may request that the public servant's ethics executive determine a question about the application of conflict of interest rules to the public servant. 2006, c. 35, Sched. A, s. 69 (2).

Duty to notify

(3) If 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 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. 2006, c. 35, Sched. A, s. 69 (3).

Inquiries

(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. 2006, c. 35, Sched. A, s. 69 (4).

DEMOCRACY WATCH

and

Applicant (Appellant)

ONTARIO INTEGRITY COMMISSIONER

Respondent (Respondent in Appeal)

Court File No. COA-23-CV-0858

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at: Toronto

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