

Court File No.: 548/19

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

**BETWEEN:**

**DEMOCRACY WATCH**

**Applicant**

- and -

**ONTARIO INTEGRITY COMMISSIONER**

**Respondent**

**NOTICE OF APPLICATION FOR JUDICIAL REVIEW**

**TO THE RESPONDENT:**

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION for judicial review will come on for a hearing before the Divisional Court on a date to be fixed by the registrar at the place of hearing requested by the applicant. The applicant requests that this application be heard at the City of Toronto, *Divisional Court, 130 Queen St. West, Toronto, Ontario.*

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.


IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court within thirty days after service on you of the applicant's application record, or at least four days before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN TO IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO

DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS APPLICATION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for hearing or terminated by any means within five years after the notice of application was filed with the court, unless otherwise ordered by the court.

Date: October 10, 2019

Issued by   
Local registrar

Address of court office Osgoode Hall  
130 Queen Street West  
Toronto, ON M5H 3K6

TO: **OFFICE OF THE INTEGRITY COMMISSIONER**  
2 Bloor Street West  
Suite 2100  
Toronto ON M4W 3E2

AND TO **ATTORNEY GENERAL OF ONTARIO** *(as required by subsection 9 (4) of the Judicial Review Procedure Act)*  
Crown Law Office – Civil  
720 Bay Street  
8th Floor  
Toronto, Ontario M7A 2S9

## APPLICATION

1. The Applicant, Democracy Watch, makes application for:
  - (a) An Order requiring the Integrity Commissioner to disclose publicly any ruling(s) or determination(s) made by the Integrity Commissioner or the Conflict Commissioner with respect to the conduct of:
    - (i) Dean French ("French"), former Chief of Staff to the Premier of Ontario, Doug Ford (the "Premier");
    - (ii) Steve Orsini ("Orsini"), former Secretary to the Ontario Cabinet;
    - (iii) Derek O'Toole ("O'Toole"), Senior Policy Advisor to the Premier's Chief of Staff, and
    - (iv) Greg Harrington ("Harrington"), former Policy Advisor to French;
  - (b) In the alternative to (a), if no such ruling(s) or determination(s) have been made, an Order requiring the Integrity Commissioner to issue public rulings or determinations with respect to the conduct of French, Orsini, O'Toole and Harrington;
  - (c) In the further alternative to (a), if no inquiries have been made with respect to the conduct of French, Orsini, O'Toole and Harrington, an Order requiring the Integrity Commissioner to make inquiries, and subsequently issue public rulings or determinations, with respect to the conduct of French, Orsini, O'Toole and Harrington;
  - (d) An Order granting public interest standing to the Applicant, if required; and
  - (e) Such further and other relief as this Honourable Court may deem just.
2. The grounds for the application are:
  - A. Legislative Context**
    - (a) Ontario's Office of the Integrity Commissioner is independent of government, and was established to maintain high standards of ethical conduct in the Ontario Public Service.

- (b) Section 23 of the *Members Integrity Act*, SO 1994, c 38 (the “MIA”), provides for the appointment of an Integrity Commissioner. Section 23.12 of the *MIA* provides that “The Commissioner may exercise the powers and shall perform the duties assigned to him or her under this Act and any other Act.”
- (c) Pursuant to the *Public Service of Ontario Act, 2006* (“PSOA”), every public servant has an ethics executive. 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.
- (d) The Integrity Commissioner acts as the Ethics Executive in respect of Ministers’ staff, chairs of public bodies, former deputy ministers, the Secretary of the Cabinet, former Cabinet Secretaries, former public body employees and appointees, and other persons.
- (e) Section 65(4) provides that an 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”. Section 65(5) of the *PSOA* mandates an ethics executive to make a determination with respect to any matter that is the subject of such an inquiry. No statutory provision requires that such determinations be kept private or confidential, or prohibits such determinations from being disclosed publicly.

**B. Petitions by the Applicant**

- (f) On March 20, 2019, the Integrity Commissioner issued a public report with respect to the conduct of the Premier (the “Report”). The Report resulted from requests made by certain Members of Provincial Parliament, pursuant to s. 30 of the *Members’ Integrity Act, 1994*, regarding the

Premier's conduct in relation to the appointment of Ron Taverner ("Taverner") as Commissioner of the Ontario Provincial Police.

- (g) Though the Integrity Commissioner concluded that the Premier had not breached conflict of interest rules, he found that the process used for Taverner's appointment was "flawed" and "troubling".
- (h) In the course of his investigation which resulted in the issuance of the Report, the Integrity Commissioner made inquiries of French, Orsini, O'Toole and Harrington. The Report contained evidence that:
  - (i) French, Orsini, O'Toole and Harrington provided preferential treatment to Taverner throughout the appointment process for the Commissioner of the Ontario Provincial Police;
  - (ii) French and Orsini provided preferential treatment to Mario Di Tommaso, the Deputy Minister of Community Safety, by considering only him for the position of Deputy Minister of Community Safety; and
  - (iii) French provided preferential treatment to Chris Froggatt, by connecting him with Taverner for the purpose of providing communications advice and assistance.
- (i) As a result, the Report raised issues of whether French, O'Toole and Harrington had violated their obligations pursuant to s. 6 of Ontario Regulation 382/07 (*Conflict of Interest Rules for Public Servants (Ministers' Offices) and Former Public Servants (Ministers' Offices)*), and whether Orsini had violated his obligations pursuant to s. 6 of Ontario Regulation 381/07 (*Conflict of Interest Rules for Public Servants (Ministry) and Former Public Servants (Ministry)*).
- (j) On March 25, 2019, the Applicant, by correspondence delivered to the Integrity Commissioner and the Conflict Commissioner, requested:
  - (i) That the Integrity Commissioner investigate, and issue a public ruling, with respect to the conduct of French, O'Toole and Harrington; and

- (ii) That the Conflict Commissioner investigate, and issue a public ruling, with respect to the conduct of Orsini.
- (k) On March 28, 2019, the Conflict Commissioner refused the Applicant's request with respect to Orsini, on the basis 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." The Conflict Commissioner did not specify which provision(s) of the *Freedom of Information and Protection of Privacy Act* ("FIPPA") purportedly prohibited the issuance of public rulings as requested by Democracy Watch.
- (l) On April 11, 2019, the Integrity Commissioner similarly refused the Applicant's request. Though acknowledging that no provision of the *PSOA* prohibits the Integrity Commissioner from making a determination public, the Integrity Commissioner stated 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".
- (m) 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.
- (n) On September 30, 2019, the Applicant again wrote to the Integrity Commissioner, seeking clarification of the basis for the denials of its March 25, 2019 requests. In his October 1, 2019 response, the Integrity Commissioner failed to provide such clarification, instead repeating the comments made in his April 11, 2019 letter.

**C. Applicant's Legal Position**

- (o) Determinations of the Integrity Commissioner with respect to whether a public servant violated the law do not constitute personal information of

the public servant, as defined by either the *PSOA* (including its regulations) or *FIPPA*.

- (p) The Integrity Commissioner exercises quasi-judicial functions, including conducting investigations, ascertaining the existence of facts, and drawing legal conclusions with respect to compliance with conflict of interest rules.
- (q) Transparency of quasi-judicial processes is a quasi-constitutional principle.
- (r) A core tenet of democracy is that public officials must be held accountable to the public for their conduct in the course of exercising their duties.
- (s) Democracy is facilitated by ensuring that citizens have the information required to participate meaningfully in the democratic process.
- (t) Discretion conferred by statute must be exercised in a manner that is within a reasonable interpretation of the legislature's intent, in accordance with the principles of the rule of law, and in compliance with the *Canadian Charter of Rights and Freedoms*.

#### **D. Public Interest Standing**

- (u) The Applicant is a national non-profit, non-partisan organization, which advocates for democratic reform, government accountability, and corporate responsibility.
- (v) The Applicant should be granted public interest standing, if necessary, because:
  - (i) Ensuring the transparency of quasi-judicial processes and the accountability of public officials are serious issues;
  - (ii) The Applicant has a genuine interest and a real stake in this issue; and
  - (iii) In all the circumstances, this application is a reasonable and effective means to bring the issue before the courts.

- (w) The Applicant does not seek costs of this application, and requests that costs not be awarded against it.
  - (x) Sections 6(1) and 9(2) of the *Judicial Review Procedure Act*, RSO 1990, c J.11.
  - (y) Rules 14.05 and 68 of the *Rules of Civil Procedure*, RRO 1990, Reg 194.
  - (z) Sections 2, 4, 56-69, and 94-98 of the *PSOA*;
  - (aa) Such further and other grounds as counsel may advise and this Honourable Court may permit.
3. The following documentary evidence will be used at the hearing of the application:
- (a) The Affidavit of Duff Conacher, to be sworn, and the exhibits thereto; and
  - (b) Such further and other evidence as counsel may advise and this Honourable Court may permit.

October 10, 2019

**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



DEMOCRACY WATCH  
Applicant and DEAN FRENCH, et al  
Respondents

Court File No.:

548/19

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

Proceeding commenced at Toronto.

**NOTICE OF APPLICATION  
FOR JUDICIAL REVIEW**

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

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

Lawyers for the Applicant