Court File No. COA-23-CV-0858

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

DEMOCRACY WATCH

Appellant

-and-

ONTARIO INTEGRITY COMMISSIONER

Respondent

-and-

ANIMAL JUSTICE, BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION and CENTRE FOR FREE EXPRESSION AT TORONTO METROPOLITAN UNIVERSITY

Interveners

FACTUM OF THE INTERVENERS, ANIMAL JUSTICE, BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATTION, and CENTRE FOR FREE EXPRESSION AT TORONTO METROPOLITAN UNIVERSITY

February 27, 2024

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A. Overview

1. Animal Justice, British Columbia Civil Liberties Association, and the Centre for Free Expression at Toronto Metropolitan University (**"Joint Interveners"**) intervene in this Appeal to address a narrow issue of fundamental importance: the application of the third branch of the test for public interest standing in *Council of Canadians with Disabilities* – "whether the proposed suit is a reasonable and effective means of bringing the case to court". The Joint Interveners' focus is on the interpretation and application of this factor where public interest standing is sought when the entity or individual with *private* standing has *not* challenged state (in)action, presumably because it would be against its interests to do so. The concern is that such self-interested behaviour undermines the *public* interest in legality.[1]

2. The Appellant, Democracy Watch, asserts public interest standing to challenge nine decisions of the Respondent, Office of the Integrity Commissioner (**"Commissioner"**), under the *Lobbyists Registration Act, 1998*, following investigations into alleged wrongdoing by lobbyists where the Commissioner did not impose a penalty.[2] The Application Judge and the Divisional Court denied public interest standing to the Appellant on the basis that, *inter alia*, the "proposed suit" is not a "reasonable and effective means" of bringing the case to court, for *two* reasons:

a. there is "a conflict between the lobbyists' private interests and the public interest advocated by the applicant";[3] and

b. the "legislative scheme suggests that only lobbyists are to have standing to challenge a decision of the Commissioner," arising from the statutory grant of standing under the *Lobbyists Registration Act*, which is limited to "only the subject of an inquiry".[4]

3. The Joint Interveners argue that the courts below erred on both points for the following *four* reasons:

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[1] *Attorney General of British Columbia v Council of Canadians with Disabilities*, 2022 SCC 27, paras. 22, 28, 37 [*CCD*].
[2] *Lobbyists Registration Act, 1998*, SO 1998, c 27, Sch [*Lobbyists Registration Act*]; *Democracy Watch v Ontario Integrity Commissioner*, 2021 ONSC 7383, para. 19 [*Democracy Watch ONSC*]
[3] *Democracy Watch ONSC*, para. 41; *Democracy Watch v Ontario Integrity Commissioner*, 2022 ONSC 4761, para. 8 [*Democracy Watch DivCourt*].
[4] *Democracy Watch ONSC*, para. 43.

a. Public interest standing is a "reasonable and effective means" where the interests of private litigants are misaligned with the public interest in legality.

b. The misalignment between the interests of litigants with private standing and the broader public interest was central to the foundational decisions of *Thorson*, *McNeil*, and *Finlay*, which should have informed the analysis of the courts below.

c. The misalignment between the interests of litigants with private standing and the public interest in legality is particularly acute in specific areas of public policy, including animal welfare, conflict of interest, environmental assessment and permitting, freedom of expression, police misconduct, and tax administration. As such, the implications of this Appeal extend well beyond the context of lobbying.

d. A legislative grant of private standing that prohibits public interest standing would be unconstitutional under section 96 of the *Constitution Act, 1867*, and conflict with section 11(2) of the *Courts of Justice Act*,[5] and should therefore be read down to avoid these results.

4. The Joint Interveners take no position on the merits of the Appeal.

B. Issues and the Law

a. Public interest standing is a "reasonable and effective means" where the interests of private litigants are misaligned with the public interest in legality

5. Public interest standing is a "reasonable and effective means" to bring a legal question to court when the interests of the person or entity with private standing are misaligned with the broader public interest in legality. It may be in the interest of the person or entity with private standing to *not* challenge the legality of state action for many reasons, including (but not limited to): (i) the decision favours them; (ii) they do not want to challenge the decision because they are a regulated entity or another level of government which interacts with the decision maker on multiple issues and they do not wish to disturb that relationship; or (iii) they are part of the very government whose conduct is at issue (e.g. the Attorney General).

6. In such circumstances, public interest standing is required to further what the Supreme

[5] *Courts of Justice Act*, RSO 1990, c C.43, section 11(2).

Court in *Downtown Eastside* and *CCD* described as the "legality principle" – i.e., "that state action should conform to the Constitution and statutory authority and that there must be practical and effective ways to challenge the legality of state action."[6] Without a grant of public interest standing, state action would effectively be immunized from legal challenge.

b. *Thorson*, *McNeil*, and *Finlay* are central to this Appeal

7. The first Supreme Court decisions on public interest standing – *Thorson*, *McNeil*, and *Finlay* – presented this precise problem.[7] The Supreme Court granted public interest standing because there was no reasonable probability that the entity or person with private standing would bring the issue before the courts. The interests of the person or entity with private standing were misaligned with the broader public interest in legality. These cases are directly on point. Respectfully, the courts below should have cited and applied these precedents to this proceeding.

8. In *Thorson*, the Court (per Justice Laskin) granted public interest standing to Joseph Thorson to challenge the constitutionality of the *Official Languages Act* on federalism grounds. For Justice Laskin, "it would be strange and, indeed, alarming, if there was no way in which a question of alleged excess of legislative power, a matter traditionally within the scope of the judicial process, could be made the subject of adjudication."[8] In other words, Justice Laskin was concerned with the legality principle.

9. Justice Laskin specifically addressed the possibility that the Attorney General of Canada, "in his capacity as representative of the Crown in right of Canada in matters legal" could in theory assert private standing to challenge the *Official Languages Act*, as a reason *not* to confer public interest standing. But he summarily dismissed this argument, on the basis that "the Attorney General is the legal officer of a Government obliged to enforce legislation enacted by Parliament and a challenge is made to the validity of the legislation" – i.e., because the interests of the public official with standing were misaligned with the broader public interest in legality.[9]

10. In *McNeil*, the Court (per Chief Justice Laskin) granted journalist Gerard McNeil public

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[6] *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 [*Downtown Eastside*], para. 31; *CCD*, paras. 31 to 33.
[7] *Thorson v Attorney General of Canada*, [1975] 1 SCR 138 [*Thorson*]; *Nova Scotia Board of Censors v McNeil*, [1976] 2 SCR 265 [*McNeil*]; *Finlay v Canada (Minister of Finance)*, [1986] 2 SCR 607 [*Finlay*].
[8] *Thorson*, p. 145.
[9] *Thorson*, p. 146.

interest standing to challenge the constitutionality of the provincial legislation which authorized the Nova Scotia Board of Censors to prohibit the showing of the "Last Tango in Paris" on federalism grounds. The lower court had considered denying public interest standing because a constitutional challenge could be brought by "film exchanges and theatre owners" which had private standing.[10] But the Supreme Court rejected this argument, on the basis that "the film exchanges and the theatre owners would not have an interest similar to that of the public."[11] In other words, because the film exchanges and the theatre owners with private standing were unlikely to challenge the censoring of the film, their interests were misaligned with the broader public interest in legality.[12]

11. The implicit premise in *McNeil* was that these regulated entities may have had disincentives to take their regulator to court to challenge a decision that did not favour them. Chief Justice Laskin adopted this argument as his own – "there appears to be no other way, practically speaking, to subject the challenged Act to judicial review" – and therefore granted public interest standing to Mr. NcNeil.[13]

12. Finally, in *Finlay*, the Court (per Justice LeDain), granted Jim Finlay, a social assistance recipient in Manitoba, public interest standing in an application for judicial review to bring an administrative law challenge to the legality of the federal government's transfer payments to Manitoba under the federal *Canada Assistance Plan*. The Court followed *Thorson* to reject the argument that Mr. Finlay should be denied standing because of "[t]he recognized standing of the Attorney General [of Canada] to assert a purely public interest in the limits of statutory authority".[14]

13. The Court went even further and expressly stated that the interest of the Attorney General was misaligned with the broader public interest in legality, based on "the position adopted by the Attorney General [of Canada] in the case" – because he acted for the Respondents, the federal Ministers of Finance and National Health and Welfare, and indeed was a Respondent himself.[15] Moreover, the Court did not even mention, let alone address, the theoretical possibility that

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[10] *McNeil*, p. 270.
[11] *McNeil*, p. 270.
[12] As was recognized by *Downtown Eastside*, para. 47 and *CCD*, para. 38.
[13] *McNeil*, p. 271.
[14] *Finlay*, p. 631.
[15] *Finlay*, p. 634. The Attorney General was the Hon. John Crosbie.

Manitoba could assert private standing, since the province clearly had no interest in challenging the legality of the federal transfer payments at issue, which it was no doubt happy to receive.

14. *Thorson*, *McNeil* and *Finlay* remain good law, even though the specific concern central to them – the misalignment between the interests of an entity or person with standing, and the broader public interest in legality – was not directly addressed by the Supreme Court in *Downtown Eastside* or *CCD*. These more recent decisions on public interest standing arose under the *Charter*, where the interests of rights-claimants with private standing are *almost always* aligned with the broader public interest in legality – unlike in federalism challenges (*Thorson*, *McNeil*) and applications for judicial review under administrative law (*Finlay*), where those interests might diverge. The concern under the "reasonable and effective means" analysis in *Charter* cases is a rather different one: to ensure that a public interest litigant will not crowd out the voices of rights-claimants themselves who may similarly have a vested interest in challenging the decision or law at issue.

c. The misalignment between the interests of litigants with private standing and the public interest in legality is particularly acute in specific contexts

15. The misalignment between the interests of litigants with private standing and the broader public interest in legality is particularly acute in specific policy contexts. These include: (a) animal welfare; (b) conflict of interest by politicians; (c) environmental assessment and permitting; (d) freedom of expression; (e) police misconduct; and (f) tax administration. In resolving this Appeal, this Court should be alert to these broader implications and preserve the scope for public interest standing in areas outside the lobbying context.

Animal welfare

16. An owner or custodian of an animal subject to animal welfare legislation would have private standing but no interest in challenging a favourable enforcement decision (e.g. a decision not to issue an order to address an animal's distress or to issue an order that may be too weak to adequately protect the animal(s) at issue). Public interest standing is necessary to challenge any under-enforcement of animal welfare legislation.

17. In Ontario, for instance, the *Provincial Animal Welfare Services Act* ("*PAWS Act*") prohibits causing an animal to be in "distress".[16] Anyone can report a violation of the *PAWS Act* to an animal welfare inspector, who has a range of powers to investigate a complaint of animal distress and may ultimately make an order under section 30(1). Animal welfare inspectors may also take possession of an animal in distress under section 31 of the *PAWS Act.*

18. Only an owner or custodian of an animal has a legislative grant of private standing to appeal the section 30(1) order of an animal welfare inspector or the decision to remove an animal under section 31, under section 38(1) of the *PAWS Act*.[17] Public interest standing for organizations like Animal Justice is necessary to judicially review decisions of an animal inspector to not enforce the *PAWS Act*, where the private interests of animal owners and custodians conflict with the public interest in legality. Animal welfare laws are similar in other provinces, granting access to justice for animal owners while leaving animal protection advocates with few tools to advance the interests of animals when government decisions put their health and well-being at risk.

Conflict of interest

19. A politician who is subject to conflict of interest regulation would have private standing but no interest in challenging a favourable decision. Public interest standing is essential to ensuring a court can review the alleged illegality of such a decision. The Federal Court of Appeal conferred public interest standing based on this line of reasoning in *Democracy Watch v Canada (Attorney General)*, an application for judicial review challenging the legality of the federal Conflict of Interest and Ethics Commissioner's power to use a conflict of interest screen as a compliance measure under section 29 of the federal *Conflict of Interest Act.*[18] As the Court explained, "even if it is the public office holders who are directly affected by the conflict of interest screens, it is unlikely that they will challenge them in court" – i.e., there was a misalignment between the interests of litigants with private standing and the broader public interest in legality, which justified conferring public interest standing.[19]

Environmental assessment and other environmental decisions

[16] *Provincial Animal Welfare Protection Act, 2019* SO 2019, c 13, sections 1(1) and 15 [*PAWS Act*].
[17] *PAWS Act*, section 38.
[18] *Democracy Watch v Canada (Attorney General)*, 2018 FCA 194 [*Democracy Watch FCA*]; *Conflict of Interest Act,* SC 2006, c 9.
[19] *Democracy Watch FCA*, para. 21.

20. An entity subject to environmental assessment legislation would have private standing but no interest in challenging a decision to approve a project. Public interest standing is essential to ensuring a court can review the alleged illegality of a project approval. The classic example of this situation is *Friends of the Oldman River Society*.[20] Alberta successfully applied to Canada to approve a dam, and therefore had no reason to challenge the decision. The applicant, Friends of the Oldman River Society, commenced an application for judicial review in the Federal Court to quash Canada's approval. In dismissing the application, the Federal Court assumed without deciding that the Friends of the Oldman River Society had public interest standing, even though Alberta and Canada had asserted it did not.[21] The issue of standing was not raised again by Alberta or Canada before the Federal Court of Appeal or the Supreme Court. Public interest standing was essential for the Supreme Court to review the legality of the dam, and to explicate the division of powers in relation to environmental assessment.

21. Another example is *Friends of the Island*, where an NGO challenged an environmental assessment that had approved the Confederation Bridge and the discontinuance of the ferry service to Prince Edward Island, arising from an agreement between Canada and the province.[22] The Federal Court categorically rejected the argument that the NGO should be denied public interest standing because Prince Edward Island had private standing to raise the same issues, in language that is directly applicable (emphasis added):[23]

> It is argued that the applicant should not be given standing, at least, with respect to the constitutional issue, because there are other ways of getting that issue before the Court. It is argued that the provincial government can bring suit and that it has expressly reserved this right under the Federal-Provincial Agreement. This is not convincing. **As a party to that agreement, it is highly unlikely that the provincial government would test the constitutionality of the proposed discontinuance of the ferry service. A party should not be denied standing merely because theoretically there are other ways of getting the issue before the Court. The possibility of such other actions being taken has to carry a reasonable degree of probability before standing should be refused on that basis.** Such does not exist in this case. While the provincial government can, it is

[20] *Friends of Oldman River Society v Canada (Minister of Transport)*, [1990] 1 FC 248 [*Friends of Oldman River Society FC*]; *Friends of Oldman River Society v Canada (Minister of Transport) (C.A.)*, [1990] 2 FC 18; *Friends of the Oldman River Society v Canada (Minister of Transport)*, [1992] 1 SCR 3.
[21] *Friends of Oldman River Society FC*, pp. 261 to 268.
[22] *Friends of the Island Inc. v Canada (Minister of Public Works) (T.D.)*, [1993] 2 FC 229 [*Friends of the Island*].
[23] *Friends of the Island*, pp. 283 to 284.

> not likely to take action. The applicant has met the requirement that there is no other effective and practical means of getting the matter before the Court, both with respect to the constitutional and the environmental issues.

22. The same concern arises in other areas of environmental law, such as pollution permitting, air emission approvals, approvals to construct tailing ponds, approvals to discharge waste and effluent to water, approvals surrounding the remediation of contaminated sites/soil, etc. Companies granted favorable decisions cannot be expected to pursue legal challenges where the regulator or approving body has acted outside their statutory authority.

Freedom of expression

23. An individual with standing may not wish to challenge a restriction on their right to freedom of expression under section 2(b) of the *Charter*. In these situations, public interest standing is essential for NGOs, like the Centre for Free Expression, to bring these challenges. For example, an Ontario public school recently removed all books published before 2008. The parents of children whose section 2(b) rights have been violated may not wish to oppose their child's school. Another scenario is where a provincial ministry directs the removal of books from school or public libraries that are provincially funded. The school boards and the public libraries might have private standing to challenge such decisions, but as regulated entities (like the theatres in *McNeil*) might not have an interest in doing so.

Police misconduct

24. A police officer or police force would have private standing but no interest in challenging a favourable decision in a misconduct complaint against them. In some jurisdictions, complainants may lack private standing or in some contexts there may be no complainant *per se*. For example, under section 45.34(1) of the *RCMP Act* and section 93(1) of the British Columbia *Police Act*, commissioners can initiate investigations of misconduct without a complaint being filed.[24] The interests of those initiating and conducting the investigation may be misaligned with the broader public interest, because they may act to protect their respective organizations or members. Any ensuing investigation or decision (or lack thereof) can only be challenged if an affected person, or an NGO, seeks public interest standing.

[24] *RCMP Act*, section 45.34(1); *Police Act*, RSBC 1996, c 367, section 93.

Tax administration

25. An individual who receives a favourable tax ruling would have private standing but no interest in challenging that decision. In *Harris*, the Federal Court of Appeal granted public interest standing to a person to challenge Revenue Canada's decisions in a set of advanced rulings based on tax liabilities flowing from the disposition of Canadian property abroad that allegedly constituted preferential treatment by the Minister of National Revenue of some taxpayers for ulterior motives and contrary to the *Income Tax Act*.[25] The Court upheld the lower court's grant of public interest standing because neither the private parties with standing (the affected taxpayers) who received a favorable ruling nor the Attorney General of Canada had an interest in pursuing the challenge.

d. A legislative grant of private standing prohibiting public interest standing would be unconstitutional and conflict with the *Courts of Justice Act*

26. The Superior Court held that the "legislative scheme suggests that only lobbyists are to have standing to challenge a decision of the Commissioner," arising from the statutory grant of standing under section 17.8 of the *Lobbyists Registration Act* to "only the subject of an inquiry". Since the Act does not expressly prohibit the conferral of public interest standing, the Court interpreted section 17.8's grant of private standing as impliedly prohibiting public interest standing.

27. This is an unprecedented ruling, for which the Superior Court did not cite a single authority, with good reason. A legislative grant of private standing which also prohibits public interest standing would be facially unconstitutional under section 96 of the *Constitution Act, 1867.* As the Supreme Court explained most recently in *Reference re Code of Civil Procedure (Que.), art. 35*, the superior courts are "ideally placed to ensure the maintenance of the rule of law" and are indeed "the *primary* guardians of the rule of law".[26] While section 96 protects the core jurisdiction of the superior courts, this Appeal provides this Court with the opportunity to clarify that section 96, in addition, is the constitutional basis for standing rules.[27] Since superior courts cannot proceed on their own motion, standing rules are necessary to enable them to

[25] *Harris v Canada (C.A.),* [2000] 184 FTR 106 [*Harris*].
[26] *Reference re Code of Civil Procedure (Que.), art. 35*, 2021 SCC 27, paras. 48 and 50.
[27] *Crevier v A.G. (Québec) et al.*, [1981] 2 SCR 220.

perform their core constitutional function of reviewing the legality of executive action.

28. Section 96 requires, by necessary implication, rules governing private standing. It also follows that section 96 requires that public interest standing be available, at a minimum, in situations where there is a misalignment between the interests of litigants with private standing and the broader public interest in legality, to prevent the immunization of executive decisions from legal challenge. Legislation which purports to eliminate public interest standing in such contexts would be unconstitutional. In the face of the Superior Court's suggestion that section 17.8 of the *Lobbyists Registration Act* had *precisely* this effect, this Court must clearly affirm that it cannot, and should read down that provision to avoid this unconstitutional result.

29. In the alternative, this Court could reach the same result on a non-constitutional basis, by interpreting section 17.8 of the *Lobbyists Registration Act* to be consistent with section 11(2) of the *Courts of Justice Act*. Section 11(2) provides "the Superior Court of Justice has all the jurisdiction, power and authority historically exercised by courts of common law and equity in England and Ontario". In Ontario, this provision is the statutory basis for the supervisory jurisdiction of the Superior Court over the Commissioner. It also provides a statutory basis for standing rules, including public interest standing in situations where there is misalignment between the interests of litigants with private standing and the broader public interest in legality.

30. If section 17.8 were to eliminate public interest standing in relation to the Commissioner's decisions, it would therefore need to do so expressly. This Court should interpret section 11(2) as a "quasi-constitutional" statutory provision, much like a provincial human rights code, which can only give way to "express and unequivocal language … in some other enactment".[28] Because section 17.8 does not employ such "express and unequivocal language", it does not have the effect that the Superior Court attributed to it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 27th DAY OF FEBRUARY, 2024

Sujit Choudhry (45011E)

Mani Kakkar (65942V)

[28] *Insurance Corporation of British Columbia v Heerspink*, [1982] 2 SCR 145, pp. 157 to 158.

SCHEDULE "A" LIST OF AUTHORITIES

Authorities

1. *Attorney General of British Columbia v Council of Canadians with Disabilities*, 2022 SCC 27
2. *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45.
3. *Crevier v A.G. (Québec) et al.*, [1981] 2 SCR 220
4. *Democracy Watch v Canada (Attorney General)*, 2018 FCA 194
5. *Downtown Eastside Sex Workers United Against Violence Society v Canada (Attorney General),* 2010 BCCA 439, 2012 SCC 45.
6. *Finlay v Canada (Minister of Finance)*, [1986] 2 SCR 607
7. *Friends of Oldman River Society v Canada (Minister of Transport)*, [1990] 1 FC 248
8. *Friends of the Island Inc. v Canada (Minister of Public Works) (T.D.)*, [1993] 2 FC 229
9. *Harris v Canada (C.A.),* [2000] 184 FTR 106
10. *Insurance Corporation of British Columbia v Heerspink*, [1982] 2 SCR 145
11. *Nova Scotia Board of Censors v McNeil*, [1976] 2 SCR 265
12. *Reference re Code of Civil Procedure (Que.), art. 35*, 2021 SCC 27
13. *Thorson v Attorney General of Canada*, [1975] 1 SCR 138

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY-LAWS

Provincial Animal Welfare Protection Act, 2019 SO 2019, c 13

1(1) "distress" means the state of being,

(a) in need of proper care, water, food or shelter,

(b) injured, sick, in pain or suffering, or

(c) abused or subject to undue physical or psychological hardship, privation or neglect; ("détresse")

15(1) Causing distress
No person shall cause an animal to be in distress.

Permitting distress
(2) No owner or custodian of an animal shall permit the animal to be in distress.

Exposure to undue risk of distress
(3) No person shall knowingly or recklessly cause an animal to be exposed to an undue risk of distress.

30(1) An animal welfare inspector who has reasonable grounds to believe that an animal is in distress and who is able to promptly find the owner or custodian of the animal may order the owner or custodian to take such action as may, in the opinion of the inspector, be necessary to relieve the animal of its distress, which may include, without limiting the generality of the foregoing, having the animal examined and treated by a veterinarian at the expense of the owner or custodian.

31(1) An animal welfare inspector may remove an animal from the place where it is and take possession of the animal for the purpose of providing it with necessaries to relieve its distress if,

(a) a veterinarian has advised the inspector in writing that alleviating the animal's distress necessitates its removal;

(b) the inspector has inspected the animal and has reasonable grounds for believing that the animal is in distress and the owner or custodian of the animal is not present and cannot be found promptly; or

(c) an order respecting the animal has been made under section 30 and the order has not been complied with.

38(1) An owner or custodian of an animal may appeal the following to the Board within five business days after receiving notice of them:

1. An order from an animal welfare inspector.
2. A decision by an animal welfare inspector to remove an animal from a place.
3. A decision to take an animal into the Chief Animal Welfare Inspector's care.

Royal Canadian Mounted Police Act, RSC 1985, c R-10

45.34 (1) For the purpose of ensuring that the activities of the Force are carried out in accordance with this Act or the *Witness Protection Program Act*, any regulations or ministerial directions made under them or any policy, procedure or guideline relating to the operation of the Force, the Commission may, on the request of the Minister or on its own initiative, conduct a review of specified activities of the Force and provide a report to the Minister and the Commissioner on the review.

Police Act, RSBC 1996, c 367

93(1)Regardless of whether a complaint is made or registered under section 78, if at any time information comes to the attention of the police complaint commissioner concerning the conduct of a person who, at the time of the conduct, was a member of a municipal police department and that conduct would, if substantiated, constitute misconduct, the police complaint commissioner may

(a)order an investigation into the conduct of the member or former member, and

(b)direct that the investigation into the matter be conducted under this Division by any of the following as investigating officer:

(i)a constable of the municipal police department who has no connection with the matter and whose rank is equivalent to or higher than the rank of the member or former member whose conduct is the subject of the investigation;

(ii)a constable of an external police force who is appointed for the purpose of this section by a chief constable, a chief officer or the commissioner, as the case may be, of the external police force;

(iii)a special provincial constable appointed for the purpose of this section by the minister.

DEMOCRACY WATCH Responding Party (Respondent)	and	**ONTARIO INTEGRITY COMMISSIONER** Responding Party (Appellant)	Court File No: COA-23-CV-0858

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