Court File No. 456/19

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

B E T W E E N :

ATTORNEY GENERAL FOR ONTARIO

Applicant

- and -

INFORMATION AND PRIVACY COMMISSIONER and CANADIAN BROADCASTING CORPORATION

Respondents

APPLICATION UNDER the *Judicial Review Procedure Act*, RSO 1990, c J.1

FACTUM OF THE INTERVENERS THE CENTRE FOR FREE EXPRESSION, CANADIAN JOURNALISTS FOR FREE EXPRESSION, THE CANADIAN ASSOCIATION OF JOURNALISTS, and ABORIGINAL PEOPLES TELEVISION NETWORK

April 20, 2020

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I. OVERIVEW

1. On June 17, 2018, the citizens of Ontario elected its first new government in fifteen years. For the first time in Ontario's history, the newly elected government decided not to release copies of the mandate letters issued by the Premier to members of his Cabinet (Letters). As a result, a reporter with the Canadian Broadcasting Corporation requested copies of the Letters pursuant to the *Freedom of Information and Protection of Privacy Act* (*FIPPA*). In doing so, she acted in the best traditions of the press, furthering the public's right to know about fundamental questions of public policy and democracy.

2. Cabinet office refused to release the Letters, relying on the opening words to s. 12(1) of the *FIPPA* – the cabinet records exemption. The Information and Privacy Commissioner (IPC) concluded that the exemption did not apply and ordered Cabinet Office to release the Letters.

3. The issue in this Application is whether the IPC reasonably interpreted his home statute when he concluded that the Letters did not fall within the opening words of s. 12(1) of the *FIPPA*. The Interveners, a coalition of free expression and media groups who are dedicated to upholding the public's 'right to know' though a robust access to information regime, submit that the IPC's interpretation was reasonable.

4. The IPC's decision reflected the kind of exercise in statutory interpretation that the Supreme Court of Canada described in *Vavilov* as justifying curial deference. His interpretation of s. 12(1) of his home statute reflected a considered approach to the text, context and purpose of the *FIPPA* in keeping with the modern approach to statutory interpretation. The IPC's reasons demonstrate a nuanced and balanced interpretation of s. 12(1) that ought to be deferred to.

5. The Interveners were granted leave to intervene in these proceedings to make submissions on three aspects of the IPC's decision that support its reasonableness: its adherence to accepted principles of interpreting access to information legislation; its purposive approach in linking the scope of s. 12(1) of the *FIPPA* to the harms that the section was designed to avoid; and its proper rejection of an interpretation that would result in harmful, absurd consequences that are inconsistent with the purpose of the *FIPPA* itself.

II. FACTS

6. The Interveners are a coalition of four organizations which share a common interest in maintaining a robust access to information scheme in order to support the public's right to know about critical matters of public interest.

7. The Centre for Free Expression is a non-partisan centre based at Ryerson University, whose objects include serving as a hub for public education, research and advocacy on free expression and the public's right to seek, receive and share information.

8. Canadian Journalists for Free Expression is a non-profit NGO founded in 1981, whose core purpose is to defend the rights of journalists and to contribute to the development of media freedom, both in Canada throughout the world.

9. The Canadian Association of Journalists – founded in 1978 as the Centre for Investigative Journalism – has a mandate to promote excellence in journalism and to uphold the public's right to know.

10. The Aboriginal Peoples Television Network was the first independent national Aboriginal broadcaster in the world, with programming by, for and about Aboriginal peoples. APTN's investigative journalism and reporting on topics related to Aboriginal peoples in Canada

– both of which rely on access to information legislation – are core components of its commitment to reconciliation.

11. The Interveners do not take a position on any contested facts on this Application.

III. ISSUES & THE LAW

12. The issue in this application is the IPC's interpretation of his home statute. The Interveners agree with the Respondents that the standard of review is reasonableness.

13. In *Vavilov* the Supreme Court confirmed that an administrative decision maker is not required to engage in a formalistic exercise of statutory interpretation or to provide reasons that mirror those of a court. Rather, decision makers are required to interpret a provision of his or her home statute in a manner consistent with its text, context and purpose.[1]

14. In this case, the IPC was required to interpret the opening words of s. 12(1) of the *FIPPA* in order to determine whether the Letters "would reveal the substance of deliberations of the Executive Council or its committees".[2] Section 12(1) contains two parts: general opening words, and an enumerated list of six specific categories of records that are exempt from disclosure. The six enumerated categories have precise, unequivocal meanings, and their interpretation can be based largely on their text. On the other hand, the opening words of the section are more open textured, and the IPC was therefore required to give greater attention to their context and purpose in interpreting them.[3]

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[1] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 119-120 [*Vavilov*].
[2] *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31, s. 12(1) [*FIPPA*].
[3] *Canada Trustco Mortgage Co. v Canada*, [2005] 2 SCR 601 at para 10.

15. The IPCs reasons demonstrate an attention to this context and purpose and reflect the kind of interpretive exercise that *Vavilov* requires. More specifically, the Interveners submit that the IPC's interpretation of s. 12(1):

a. Reflected the overall context and purpose of the *FIPPA* itself, in which exceptions to the right of access are to be interpreted narrowly;

b. Read the provision purposively by being attentive to the specific harms that the cabinet records exemption was designed to avoid; and

c. Respected the purpose of the *Act* by rejecting an interpretation that would have produced the absurd consequence of undermining the very values that access to information statutes are intended to promote.

A. THE IPC'S INTERPRETATION REFLECTED THE CONTEXT AND PURPOSE OF THE *FIPPA* AS A WHOLE

16. A fundamental argument of the Applicant in this case is that the IPC interpreted s. 12(1) narrowly and restrictively, without regard to the text, context and purpose of the Act or the provision, or the principles of statutory interpretation.[4] The core flaw with this claim is that the principles of statutory interpretation applicable to statutes like the *FIPPA* demand a narrow reading of provisions like s. 12(1). Context and purpose do not support the Applicant's interpretation, but rather are strongly supportive of the IPC's decision.

17. All legislation is to be given a fair, large and liberal interpretation as best ensures the attainment of its objects.[5] This generous approach to interpreting statutes as a whole does not, however, require that each and every provision of a statute be read broadly. Rather, in many

[4] Factum of the Applicant, para. 52.
[5] *Legislation Act, 2006*, SO 2006, c 21, s. 64(1).

cases, it is necessary to read a provision narrowly in order to ensure that the overall purpose of a statute is furthered.[6] This is the case when it comes to the interpretation of statutes like *FIPPA* which grants individuals a right of access to records held by government. Courts have long recognized that in order to further the overall purpose of these statutes, exemptions to the right of access must be read carefully and restrictively.

18. The Supreme Court famously articulated the basic purpose of access to information legislation in *Dagg v Canada*:

> The overarching purpose of access to information legislation, then, is to facilitate democracy. It does so in two related ways. It helps to ensure first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry. As Professor Donald C. Rowat explains in his classic article, "How Much Administrative Secrecy?" (1965), 31 *Can. J. of Econ. and Pol. Sci.* 479, at p. 480:
>
> > Parliament and the public cannot hope to call the Government to account without an adequate knowledge of what is going on; nor can they hope to participate in the decision-making process and contribute their talents to the formation of policy and legislation if that process is hidden from view.
>
> See also: Canadian Bar Association, *Freedom of Information in Canada: A Model Bill* (1979), at p. 6.
>
> Access laws operate on the premise that politically relevant information should be distributed as widely as reasonably possible.[7]

19. In order to ensure a broad right of access to information held by government, exceptions to the right of access must be construed narrowly. This is particularly true for s. 12(1), which is a mandatory exemption and that is not subject to the public interest override in s. 23 of the *Act*. Whereas in other cases there is discretion to release information notwithstanding the application

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[6] *Divito v Canada (Public Safety and Emergency Preparedness)*, [2013] 3 SCR 157 at para. 75.
[7] *Dagg v Canada (Minister of Finance)*, [1997] 2 SCR 403 at paras. 61-62.

of an exemption, in the case of s. 12(1), it is truly a zero-sum game: the broader the scope of the exemption, the narrower the public's right of access.

20. Because of this inherent tension between the overall purpose of legislation like *FIPPA* and the effect of exemptions, courts have historically sought to construe exemptions narrowly.[8] In interpreting *FIPPA*'s sister statute, the *Municipal Freedom of Information and Protection of Privacy Act*, the Court of Appeal has consistently relied on the requirement of broad, generous construction of statutes to grant a broad right of access, and a correspondingly narrow scope for exemptions.[9]

21. The IPCs reasons reflect this accepted approach to interpreting statutes like *FIPPA*, particularly where he dealt with the Applicant's reliance on the British Columbia Court of Appeal's *Aquasource* decision.[10] The Applicant argued on the basis of *Aquasource* that the phrase "substance of deliberations" should be read "widely" to include the body of information that Cabinet considered (or would consider in the case of submissions that were not yet presented) in making a decision.[11] The IPC found that this "expansive" interpretation of s. 12(1) failed to strike the appropriate balance between the interests of the citizen and the government when it came to transparency. Rather, the IPC preferred the more tailored approach adopted by

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[8] *Lavigne v Canada (Office of the Commissioner of Official Languages)*, [2002] 2 SCR 773 at para. 30; *Cash Converters Canada Inc. v Oshawa (City)* (2007), 86 OR (3d) 401 (CA) at para. 29; *Canada (Information Commissioner) v Canada (Minister of National Defence)*, [2011] 2 SCR 306 at para 83 (*per* Lebel J, concurring).

[9] *City of Toronto Economic Development Corporation v Information and Privacy Commissioner/Ontario* (2008), 292 DLR (4th) 706 (Ont CA) at paras. 27-30; *Toronto Police Services Board v Ontario (Information and Privacy Commissioner)* (2009), 93 OR (3d) 563 (CA) at para. 43.

[10] *Aquasource Ltd. v British Columbia (Freedom of Information and Protection of Privacy Commissioner)*, 1998 CanLII 6444 (BC CA).

[11] *Cabinet Office (Re)*, PO-3973 at para. 29 [*Decision*], **Applicant Record [AR], Tab 2, p. 19**; Factum of the Applicant, para. 67.

the Nova Scotia Court of Appeal in *O'Connor*,[12] which focused not on the kind or body of information, but rather on whether its disclosure would reveal the actual substance of Cabinet deliberations themselves. In the IPC's view, O'Connor better reflected the balance that *FIPPA* strikes in favour of a generous right of access.[13] It respected the balance between the public's right to know what the government is doing, and the governments more limited right to consider what it might to behind closed doors.[14]

22. The IPC's reasons also reflected a careful attention to the purpose of the *FIPPA* when he considered whether s. 12(1) was broad enough to encompass the *outcome* of Cabinet deliberations – that is, policy initiatives themselves. In finding that these policy outcomes themselves were not protected, he noted that this interpretation was in keeping with the overall purpose of access legislation described by the Supreme Court in *Dagg*.[15]

23. In addition to giving careful attention to the purpose of the *FIPPA*, the IPC relied on the entire context of the *Act* when interpreting s. 12(1), and in particular, the *Act*'s purpose clause.

24. Interpreting a statutory provision in its entire context requires, *inter alia* careful attention to how the provision fits into the broader statutory scheme.[16] In *Canada Post Corporation*, the Supreme Court built upon its decision in *Vavilov* and explained that a reasonable interpretation of a statutory provision must "conform to any interpretative constraints in the governing statutory scheme".[17] One such interpretative restraint is where a statute contains an express

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[12] *O'Connor v Nova Scotia* (2001), 209 DLR (4th) 429 (NSCA).
[13] *Decision*, *supra* at paras. 93-97, **AR, Tab 2, pp. 36-37**.
[14] *Decision*, *supra* at para. 108, **AR, Tab 2, p. 40**.
[15] *Decision*, *supra* at paras. 104-106, **AR, Tab 2, pp. 38-39**.
[16] *Wawanesa Mutual Insurance Company v Axa Insurance (Canada)* (2012), 112 OR (3d) 354 (CA) at para. 34.
[17] *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67 at para. 42 [*Canada Post*].

purpose statement. To be reasonable, an interpretation must be informed by any such statutory purpose provision.[18]

25. When enacting the *FIPPA*, the Legislature did not relegate its statement of purpose to a preamble. Rather, it chose to enact a purpose provision as a substantive part of *FIPPA* itself.[19] Section 1 of the *FIPPA* provides that the purpose of the Act is to "provide a right of access to information under the control of institutions in accordance with the principles that… necessary exemptions from the right of access should be limited and specific".[20] This is a clear direction that *all* exemptions, including s. 12(1), should be "limited and specific" in keeping with the generally accepted approach to interpreting access legislation discussed above.

26. The IPC's interpretation of s. 12(1) reflected an awareness of this important aspect of the overall context of the statutory scheme. The IPC specifically referred to the provision when considering what interpretation of s. 12(1) would best give effect to the central purposes of the *Act* and of the provision itself. He reasonably concluded that the *O'Connor* approach to the concept of "substance of deliberations" better reflected the entire context of the *FIPPA* and the legislatures intention to protect Cabinet confidences to the extent *necessary* to facilitate candour within the deliberative process.[21]

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[18] *Canada Post*, *supra* at para. 54.
[19] See *R. v. T.(V.)*, [1992] 1 SCR 749 at 765 (substantive provisions containing purpose statements carry full force of law unlike a mere preamble).
[20] *FIPPA*, s. 1(a)(ii).
[21] *Decision*, *supra* at paras. 105-108, **AR, Tab 2, pp. 39-40**.

B. THE IPC'S DECISION REFLECTS A PURPOSIVE INTERPRETATION THAT DOES NOT READ S. 12(1) BROADER THAN NECESSARY TO AVOID THE HARMS IT IS DIRECTED TOWARDS

27. All parties agree that a reasonable interpretation of s. 12(1) must reflect the section's underlying purpose.[22] In access legislation like the *FIPPA*, all exemptions exist to respond to specific, discrete harms. While it is important to interpret exemptions so that they can, in fact, respond to the harms they are directed against, they must not be read to go beyond this. Exemptions by their very nature limit the public's right of access, and so it is important to ensure that they are not interpreted in a manner that goes beyond what is necessary to respond to such harms. To borrow an observation made by McLachlin J., as she then was: legislation that "extends protections to areas where it serves no purpose may be unreasonable".[23]

28. In *Carleton University*, this Court relied on s. 1 of the *FIPPA* to conclude that "[t]he Legislature did not intend to create an exclusion from the application of the Act whose reach would be broader than necessary to accomplish [its] objectives."[24] The same logic holds for exemptions like s. 12(1).

29. The Report of the Williams Commission served as the blueprint for the *FIPPA*, including its cabinet records exemption. In discussing the specific need to protect cabinet confidences from an access to information regime, the Commission identified three justifications:

> First, the routine disclosure of Cabinet deliberative materials would bring and abrupt and, in our view, undesirable end to the tradition of collective ministerial responsibility. In Chapter 5 of this report, we expressed our conviction that the notion of collective ministerial responsibility retains a contemporary relevance. The requirement that each member of the Cabinet assume personal responsibility for government policy ensures that all members of the government of the day can be held

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[22] *Decision*, *supra* at para. 86, **AR, Tab 2, p. 34**; Factum of the Applicant, para. 5.
[23] *Canadian Broadcasting Corp. v Canada (Labour Relations Board)*, [1995] 1 SCR 157 at para. 113 (McLachlin J., dissenting).
[24] *Carleton University v Information and Privacy Commissioner of Ontario and John Doe*, 2018 ONSC 3696 (Div Ct) at paras. 28-29.

> accountable to the public, and encourages frank and vigorous exchanges of views in Cabinet discussions. The tradition of confidentiality of Cabinet discussions can also be supported on the basis that it permits public officials to provide the Cabinet with candid advice. Further, there is an evident public interest in ensuring that the decision-making processes of the Cabinet can be conducted as expeditiously as is possible.[25]

30. Of these concerns, the most pressing was the need to ensure members of Cabinet could express their views freely to their Cabinet colleagues without subsequently being identified as disagreeing with the policy of the government:

> If Cabinet discussions were to become a matter of public record, individual ministers would be inhibited from expressing their frank opinions for fear of later being identified as dissidents. Moreover, if government policy were presented as a series of opposing views, the ability of members of the public and of the legislature to hold all ministers responsible for government policy would be diminished.[26]

31. The Supreme Court has expressed the same rationale for protecting cabinet confidences. In *Babcock v Canada*, the Court explained the historical justification for the protection:

> The British democratic tradition which informs the Canadian tradition has long affirmed the confidentiality of what is said in the Cabinet room, and documents and papers prepared for Cabinet discussions. The reasons are obvious. Those charged with the heavy responsibility of making government decisions must be free to discuss all aspects of the problems that come before them and to express all manner of views, without fear that what they read, say or act on will later be subject to public scrutiny: see *Singh v. Canada (Attorney General)*, 2000 CanLII 17100 (FCA), [2000] 3 F.C. 185 (C.A.), at paras. 21-22. If Cabinet members' statements were subject to disclosure, Cabinet members might censor their words, consciously or unconsciously. They might shy away from stating unpopular positions, or from making comments that might be considered politically incorrect.[27]

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[25] Commission on Freedom of Information and Individual Privacy, *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy, Vol. II – Freedom of Information* (Toronto: Queen's Printer, 1980) at 284-285 [*Williams Report*].
[26] *Williams Report*, *supra* at 85.
[27] *Babcock v Canada (Attorney General)*, [2002] 3 SCR 3 at para. 18.

32. Given that exemptions to the right of access ought to be interpreted only as broadly as necessary to achieve their objectives, it was reasonable for the IPC to be attentive to these particular harms when interpreting the phrase "substance of deliberations" in s. 12(1). It was reasonable to avoid giving the phrase an interpretation that would exempt records from disclosure when their disclosure would not reasonably lead to any of the above-noted harms.

33. The IPC had before him copies of the Letters, as well as examples of other mandate letters from previous Ontario governments and from governments across Canada, all of which had been released.[28] He found as a fact that the requested Letters were "largely similar to their counterparts in their overall approach, level of detail and purpose."[29] While rightly noting that the fact that other governments had released mandate letters was not determinative of the question before him, the IPC did note that the fact that similar letters had been released without impinging on cabinet deliberations did have some relevance.[30]

34. The IPC also considered the Letters themselves and noted that none of them contained any information about the views, opinions, thoughts or ideas of Cabinet members expressed during the deliberative process, and that there was no evidence that their production give rise to any chilling effect on Cabinet deliberations themselves.[31] This observation reflected his careful attention to the actual purpose of cabinet confidences as articulated in *Babcock* – not to shield Ministers from public questioning over government policy in general, but rather to shield them from criticism respecting the actual deliberations of Cabinet itself.[32]

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[28] Copies of these other letters are contained in Volumes II and III of the Record of Proceedings.
[29] *Decision*, *supra* at para. 78, **AR, Tab 2, pp. 32-33**.
[30] *Decision*, *supra* at para. 77, **AR, Tab 2, p. 32**.
[31] *Decision*, *supra* at paras. 115, 123, **AR, Tab 2, pp. 41, 43**.
[32] *Decision*, *supra* at para. 87, **AR, Tab 2, p. 34**.

35. The IPC's logic with respect to the question of harm was a proper exercise in purposive interpretative. The purpose of s. 12(1) is primarily to ensure that members of Cabinet can speak freely, with candour and without fear that the views that they express *inside the cabinet room* will be made public. The fact that the release of documents substantially the same as the Letters has never given rise to this problem was relevant to whether the release of these Letters would give rise to such harms. The fact that there was no credible basis to suggest that the release of a document like the Letters would produce the harms s. 12(1) was designed to guard against was relevant to the question of whether they would "reveal the substance of deliberations" of Cabinet. These considerations reflect the proper, purposive approach to interpreting exemptions that this Court endorsed in *Carleton University*.

C. THE IPC REJECTED AN INTERPRETATION THAT WOULD RESULT IN ABSURD CONSEQUENCES

36. When courts interpret provisions of statutes in light of their text, context and purpose, they must consider whether a proposed interpretation produces a just and reasonable result.[33] The Supreme Court has noted that "[s]ince it may be presumed that the legislature does not intend unjust or inequitable results to flow from its enactments, judicial interpretations should be adopted which avoid such results."[34] A reasonable interpretation of a statutory provision is one that avoids absurd or unjust results, such as results that are inconsistent with, or contrary to the overall purpose of the legislation being interpreted.

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[33] *Wawanesa*, *supra* at para. 34.
[34] *Ontario v Canada Pacific Ltd.*, [1995] 2 SCR 1031 at para. 65.

37. In this case, the IPC reasonably rejected the interpretation urged by the Applicant in part because, if accepted, it would produce results that undermine the purposes of access to information legislation.

38. The Applicant relies on *Aquasource* to suggest that s. 12(1) "be read widely to include the "body of information" that has been or will be presented to Cabinet in making a decision."[35] On this approach, it is enough that a document is given to Cabinet to meet the requirement that its disclosure would reveal the substance of Cabinet's deliberations.[36] With respect to revealing the substance of deliberation of future Cabinet meetings, the Applicant goes further. It suggests that it is enough if the record relates to a matter assigned to a Cabinet minister that would require future Cabinet decision-making before implementation. This includes matters that related to operational, legislative, or financial policy.[37]

39. The danger of such a broad approach to the interpretation of s. 12(1) is that it risks sweeping in vast swaths of government records, shielding them behind a mandatory exemption that is not subject to the *FIPPA*'s public interest override provision. Nearly everything that the executive branch of government does relates to operational, legislative or financial matters. If it is enough that a record relates to such a subject-matter, it is not at all clear what the limit is to s. 12(1) would be.

40. The IPC recognized the risk of adopting such a broad approach:

> In my view, it is not enough to suggest that many of the priorities would require ministers to develop proposals or other materials that may become the subject of future Cabinet meetings. Such an approach to the exemption would potentially encompass any record that was not placed or intended to be placed before Cabinet if

[35] Factum of the Applicant, para. 67.
[36] Factum of the Applicant, para. 73.
[37] Factum of the Applicant, para. 77.

> it contains information that Cabinet Office claims may become the subject of a future Cabinet meeting.[38]

41. Cabinet plays a crucial role within Canada's democracy. While some measure of secrecy may be necessary to protect the actual substance of Cabinet deliberations themselves, shielding it from scrutiny over policy priorities or outcomes has no real value. An interpretation of s. 12(1) that would capture so much information about so critical a public institution would yield results wholly inconsistent with the twin virtues that animate access to information legislation: an informed public and an accountable government.[39]

42. The IPC's interpretation of s. 12(1) reasonably took into account the concern for ensuring the proper function of the access regime within the Canadian democratic order:

> Ministers remain at liberty to express their views on policy matters in the course Cabinet meetings as they see fit, without fear that any views expressed will be made public or become the subject of comment, criticism or questions. And each minister is equally at liberty to govern his or her own public responses to questions or comments about policy matters in accordance with his or her duties as a member of Cabinet. The prospect that members of the public or the media may wish to address questions or comments to Cabinet members on the government's policy choices is a natural and, in my view, desirable feature of democratic government which does not affect any interest in maintaining the confidentiality of Cabinet deliberations.[40]

43. By taking these considerations into account in interpreting s. 12(1), the IPC ensured that he did not adopt an interpretation that would produce the unjust result of undermining the very values that the *FIPPA* was designed to promote.

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[38] *Decision*, *supra* at para. 118, **AR, Tab 2, p. 41**.
[39] *Dagg*, *supra* at paras. 61-62.
[40] *Decision*, *supra* at para. 126, **AR, Tab 2, p. 44**.

IV. ORDER REQUESTED

44. The Interveners submit that the Application should be dismissed. In accordance with the order granting leave to intervene, the Interveners do not seek their costs, and ask that no costs be ordered against them.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DONE at the City of Toronto, this 20th day of April, 2020

Daniel Sheppard

Lawyer for the Interveners

SCHEDULE A – LIST OF AUTHORITIES

Jurisprudence

1. *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65
2. *Canada Trustco Mortgage Co. v Canada*, [2005] 2 SCR 601
3. *Divito v Canada (Public Safety and Emergency Preparedness)*, [2013] 3 SCR 157
4. *Dagg v Canada (Minister of Finance)*, [1997] 2 SCR 403
5. *Lavigne v Canada (Office of the Commissioner of Official Languages)*, [2002] 2 SCR 773
6. *Cash Converters Canada Inc. v Oshawa (City)* (2007), 86 OR (3d) 401 (CA)
7. *Canada (Information Commissioner) v Canada (Minister of National Defence)*, [2011] 2 SCR 306
8. *City of Toronto Economic Development Corporation v Information and Privacy Commissioner/Ontario* (2008), 292 DLR (4th) 706 (Ont CA)
9. *Toronto Police Services Board v Ontario (Information and Privacy Commissioner)* (2009), 93 OR (3d) 563 (CA)
10. *Aquasource Ltd. v British Columbia (Freedom of Information and Protection of Privacy Commissioner)*, 1998 CanLII 6444 (BC CA)
11. *O'Connor v Nova Scotia* (2001), 209 DLR (4th) 429 (NSCA)
12. *Wawanesa Mutual Insurance Company v Axa Insurance (Canada)* (2012), 112 OR (3d) 354 (CA)
13. *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67
14. *R. v. T.(V.)*, [1992] 1 SCR 749
15. *Canadian Broadcasting Corp. v Canada (Labour Relations Board)*, [1995] 1 SCR 157
16. *Carleton University v Information and Privacy Commissioner of Ontario and John Doe*, 2018 ONSC 3696 (Div Ct)
17. *Babcock v Canada (Attorney General)*, [2002] 3 SCR 3
18. *Ontario v Canada Pacific Ltd.*, [1995] 2 SCR 1031

Secondary Sources

19. Commission on Freedom of Information and Individual Privacy, *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy, Vol. II – Freedom of Information* (Toronto: Queen's Printer, 1980)

SCHEDULE B – LEGISLATIVE PROVISIONS

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

Purposes

1. The purposes of this Act are,

(a) to provide a right of access to information under the control of institutions in accordance with the principles that,

(i) information should be available to the public,

(ii) necessary exemptions from the right of access should be limited and specific, and

(iii) decisions on the disclosure of government information should be reviewed independently of government; and

(b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

Cabinet records

12. (1) A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of the Executive Council or its committees, including,

(a) an agenda, minute or other record of the deliberations or decisions of the Executive Council or its committees;

(b) a record containing policy options or recommendations submitted, or prepared for submission, to the Executive Council or its committees;

(c) a record that does not contain policy options or recommendations referred to in clause (b) and that does contain background explanations or analyses of problems submitted, or prepared for submission, to the Executive Council or its committees for their consideration in making decisions, before those decisions are made and implemented;

(d) a record used for or reflecting consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;

(e) a record prepared to brief a minister of the Crown in relation to matters that are before or are proposed to be brought before the Executive Council or its committees, or are the

subject of consultations among ministers relating to government decisions or the formulation of government policy; and

(f) draft legislation or regulations.

Exemptions not to apply

23. An exemption from disclosure of a record under sections 13, 15, 15.1, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

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

Rule of liberal interpretation

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

Court File No. 456/19

Attorney General of Ontario	and	**Information and Privacy Commissioner and the Canadian Broadcasting Corporation**
Applicant		Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT
(Proceedings Commenced at Toronto)

FACTUM OF THE INTERVENERS, THE CENTRE FOR FREE EXPRESSION, CANADIAN JOURNALISTS FOR FREE EXPRESSION, THE CANADIAN ASSOCIATION OF JOURNALISTS, and ABORIGINAL PEOPLES TELEVISION NETWORK

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