

Court File No. \_\_\_\_\_

**IN THE SUPREME COURT OF CANADA**  
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

ATTORNEY GENERAL FOR ONTARIO

Applicant  
(Appellant)

-and-

CANADIAN BROADCASTING CORPORATION

Respondent  
(Respondent)

-and-

INFORMATION AND PRIVACY COMMISSIONER

Respondent  
(Respondent)

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**MEMORANDUM OF ARGUMENT OF THE APPLICANT,  
ATTORNEY GENERAL FOR ONTARIO**  
(Pursuant to Rule 25 of the *Rules of the Supreme Court of Canada*, SOR/2002-156)

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## PART I – OVERVIEW AND STATEMENT OF FACTS

### A. OVERVIEW AND PUBLIC IMPORTANCE

1. The proposed appeal will be this Honourable Court’s first opportunity to address the scope of a Cabinet records exemption in a provincial freedom of information statute; specifically, Ontario’s *Freedom of Information and Protection of Privacy Act*<sup>1</sup> (the “Act”). It raises broad issues of public importance regarding the nature of Cabinet deliberations and records that reveal the “substance of deliberations of Cabinet;” the role of the Premier and Cabinet in a Westminster model of responsible government; and Parliamentary sovereignty and respect for legislative intent. Specifically, the proposed appeal will address the following issue of public importance:

*i. Are confidential communications in respect of policy initiatives and development prepared by the Premier of Ontario for his Cabinet ministers protected by the Cabinet records exemption in the Act?*

2. In this application, the Attorney General for Ontario (“Ontario”) requests leave to appeal from a decision of the Ontario Court of Appeal (“OCA”), dated January 26, 2022.<sup>2</sup> The Majority of the OCA dismissed Ontario’s appeal of a Divisional Court decision, dated August 27, 2020,<sup>3</sup> dismissing its application for judicial review of Order PO-3973, made by the former Information and Privacy Commissioner, Brian Beamish, (the “IPC”) on July 15, 2019.<sup>4</sup> In Order PO-3973, the IPC ordered Ontario’s Cabinet Office to disclose to the requestor, Canadian Broadcasting Corporation (the “CBC”), twenty-three (23) mandate letters prepared by Premier Doug Ford for each of his Cabinet Ministers shortly after the June 2018 election (the “Letters”).

3. The Letters were prepared on a confidential basis and contain policy priorities and initiatives developed by the Premier for each of his Cabinet Ministers that will require them to return to Cabinet for further approval and implementation. They include the Premier’s strategic advice, opinion, instruction, and guidance to each of his Ministers to assist them in carrying out their ministerial duties and responsibilities. The Letters were placed on a Cabinet agenda and

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<sup>1</sup> *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31 (“FIPPA”).

<sup>2</sup> *Ontario (Attorney General) v Ontario (Information and Privacy Commissioner)*, 2022 ONCA 74 (“OCA Decision”) [Tab 2D of Application Record (“AR”)].

<sup>3</sup> *Attorney General for Ontario v Information and Privacy Commissioner*, 2020 ONSC 5085, (“Divisional Court Reasons”) [Tab 2B of AR].

<sup>4</sup> *IPC Order PO-3973* (“Order PO-3973”) [Tab 2A of AR].

distributed to each Cabinet Minister at a Cabinet meeting on July 11, 2018.

4. Cabinet Office refused to disclose the Letters and relied upon the Cabinet records exemption of the Act; specifically, the opening words of section 12(1) of the Act (“section 12(1)”). Section 12(1) provides that 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...*” Section 12(1) is followed by subparagraphs (a) to (f) which list specific kinds of records that are exempted from disclosure, such as: agendas, decisions, or minutes of Cabinet deliberations (s12(1)(a)) and records reflecting ministerial consultations relating to the formulation of government policy (s12(1)(d)).

5. The IPC found that the Letters would *not* reveal the substance of deliberations of Cabinet pursuant to section 12(1). In doing so, the IPC took a narrow and restrictive approach to the interpretation of “substance of deliberations;” made significant errors in statutory interpretation; and disregarded the context, text and purpose of the Act and the exemption and importance of Cabinet confidentiality to the functioning of Cabinet government.

6. The IPC found that the Letters merely contained “outcomes” of the Premier’s deliberations which were not exempted, despite records of decision being protected by section 12(1)(a). The IPC found that the Letters needed to be distributed to “Cabinet as a whole” in order to be exempt, despite the deliberations of the Premier as First Minister being indivisible from the deliberations of Cabinet as whole, consistent with Cabinet solidarity and the functioning of Cabinet government. The IPC also found that there was no evidence of “actual deliberations” at a “specific Cabinet meeting” thereby establishing a heightened test that is clearly not required by section 12(1).

7. The IPC also adopted the “general approach,” to interpreting “the substance of deliberations”, taken by the Nova Scotia Court of Appeal (“NSCA”) in *O’Conner v Nova Scotia*,<sup>5</sup> while rejecting the “body of information approach” taken by the British Columbian Court of Appeal in *Aquasource Ltd v The Freedom of Information and Protection of Privacy Commissioner*<sup>6</sup> despite significant differences between the Ontario and Nova Scotia statutes. It adopted an “expansive approach” to the term “includes,” rather than an “illustrative approach,”

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<sup>5</sup> *O’Connor v Nova Scotia*, 2001 NSCA 132 (“O’Connor”).

<sup>6</sup> *Aquasource Ltd v Freedom of Information and Protection of Privacy Commissioner for the Province of British Columbia*, 1998 CanLII 6444, [1999] 6 WWR 1 (BC CA) (“Aquasource”).

when a plain reading of section 12(1) is consistent with subparagraphs (a) to (f) being illustrative of the types of records that are presumed to “reveal the substance of deliberations” of Cabinet. It also adopted jurisprudence from the *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M 56, that, along with other statutory differences, requires express statutory authority to hold *in camera* meetings and where constitutional conventions are not engaged.

8. The IPC’s narrow and restrictive interpretation of the “substance of deliberations” of Cabinet is inconsistent with the purpose of the Act and exemption and the functioning of Cabinet government. The purpose of the Act is to facilitate democracy and improve the workings of government. The purpose of the exemption is to “establish a robust and well-protected sphere of confidentiality within which Cabinet can function effectively in accordance with the established conventions and traditions of Cabinet government.”<sup>7</sup> Candour, solidarity and confidentiality are fundamental to the Westminster system of government where responsible ministers collectively decide government policy.<sup>8</sup> Protecting confidential communications between Cabinet ministers on matters of policy development, from premature disclosure, is clearly necessary to the proper functioning of Cabinet and what the Legislature intended be protected under the Act.

9. As stated by Justice Lauwers, writing for the Dissent of the OCA, the IPC’s narrow and restrictive interpretation of “substance of deliberations” has parsed the Cabinet records exemption down to an “irreducible core of actual communications at the Cabinet table, with everything else being disclosable.”<sup>9</sup> More significantly, the IPC’s “micromanagement” approach and new heightened test is an unwarranted incursion into the functioning of Cabinet government. If confidentiality cannot be assured, Premiers may no longer issue mandate letters, thereby harming the historical record. Or, if issued, mandate letters will be written for public consumption thereby undermining their efficacy to provide strategic direction and advice from the Premier to newly appointed Cabinet ministers. More broadly, allowing the IPC’s decision to stand will result in changes to the functioning of Cabinet government and how Cabinet ministers communicate with other ministers.

10. For all of the aforementioned reasons, the issues raised by the proposed appeal are of public

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<sup>7</sup> OCA Decision, *supra* note 2, at para 149.

<sup>8</sup> OCA Decision, *supra* note 2, at paras 128 and 131.

<sup>9</sup> OCA Decision, *supra* note 2, at para 198.

importance. Clarifying the nature of Cabinet deliberations and records and the meaning of “substance of deliberations” will be of benefit to all provinces with similarly worded freedom of information statutes<sup>10</sup> and is in the public interest.

## B. STATEMENT OF FACTS

### i. The Legislative Scheme

11. The overarching purpose of the Act is to facilitate democracy and improve the workings of government, subject to necessary exemptions that reflect important public policies which the Legislature had deemed to warrant exemption from public disclosure.<sup>11</sup> The Cabinet records exemption in section 12(1) of the Act was enacted as a necessary exemption to protect the efficacy and candour of Cabinet deliberations and to ensure the proper functioning of Cabinet (discussed further below).

12. The Cabinet records exemption prohibits disclosure of information which “would reveal the substance of deliberations” as set out in section 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**; 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

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<sup>10</sup> *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, s 12(1); *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25, s 22(1); *The Freedom of Information and Protection of Privacy Act*, SM 1997, c 50, s 19(1), 76.2(1) [Note: s 76.2(1) requires the disclosure mandate letters]; *Right to Information and Protection of Privacy Act*, SNB 2009, c R-10.6, s 17(1); *Freedom of Information and Protection of Privacy Act*, SPEI 2001, c 37, s 20(1).

<sup>11</sup> *FIPPA*, s 1.

government decisions or the formulation of government policy; and  
 e. draft legislation or regulations. [emphasis added]

13. The purpose of the exemption is to establish a robust and well-protected sphere of confidentiality within which Cabinet can function effectively in accordance with the established conventions and traditions of Cabinet government (discussed further below).<sup>12</sup>

14. The Cabinet records exemption is a *mandatory* exemption, as opposed to discretionary, and it is not subject to the public interest override found in section 23 of the Act.<sup>13</sup> This unique feature of the exemption indicates its import relative to other exemptions in the Act.

**ii. The Request Under the Act**

15. Cabinet Office received a request under the Act from the CBC for a copy of each of the Letters.<sup>14</sup> It located 23 responsive records and issued a decision denying access pursuant to section 12(1) of the Act.<sup>15</sup>

16. The CBC appealed Cabinet Office’s decision to the IPC. Cabinet Office provided copies of the Letters to the IPC, and also provided the IPC with a copy of the Cabinet agenda.<sup>16</sup>

**iii. The Cabinet Records at Issue: The Mandate Letters**

17. The Letters were prepared on a confidential basis by the Premier and addressed to each of his newly appointed Cabinet ministers.<sup>17</sup> The Letters were placed on the Cabinet agenda for a

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<sup>12</sup> OCA Decision, *supra* note 2 at para 149.

<sup>13</sup> Section 23 of *FIPPA* provides: “An exemption from disclosure of the 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.”

<sup>14</sup> Notice of Inquiry, dated November 7, 2018, (“Notice of Inquiry”) at p 4 [Tab 4A of AR].

<sup>15</sup> Notice of Inquiry, *supra* note 14 at p 2 [Note: While there are 22 Ministries, the Premier is the Minister of Intergovernmental Affairs and did not receive a letter. The 23 letters are for the remaining Ministries and two portfolio responsibilities].

<sup>16</sup> *Ibid.*

<sup>17</sup> Order PO-3973, *supra* note 4 at paras 4 and 7; Private Record of Proceedings, Tab 24 [Tab 4D of AR].

Cabinet meeting to take place on July 11, 2018, shortly after the June 2018 election.<sup>18</sup> The evidence provided to the IPC in a sealed record indicated, amongst other things, that the Letters were treated as confidential, distributed with brief remarks, and after their distribution, an all Cabinet ministers meeting continued *in camera*.<sup>19</sup>

18. No evidence can be provided about the ministers' actual discussions at the Cabinet meeting because of Cabinet confidentiality. Notably, all members of the Executive Council swear an Oath of Allegiance and Oath of Member of Executive Council to respect Cabinet secrecy ("Oath of Secrecy") and to speak his/her mind "openly and honestly without partiality, fear or favour."<sup>20</sup>

19. Confidential mandate letters are a way by which this Premier has chosen to discharge his constitutional duties as First Minister to develop and prioritize the policies and operational agenda of the new government. The Letters represent the first communication to the ministers from the Premier to establish policy priorities and a plan of action for their development and implementation over the term of the current government.<sup>21</sup> Prior governments may have issued mandate letters that were intended for public consumption but "the publication of [mandate letters] by previous governments...does not bind Cabinet Office to make the...mandate letters public."<sup>22</sup>

20. Each Cabinet minister is responsible for the development and implementation of the policy priorities within his or her respective ministry's mandate. Each policy initiative, if implemented, is required to come back to Cabinet and/or its committees for further discussion, including those that have implications for other ministries;<sup>23</sup> require new or amended legislation(s) or

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<sup>18</sup> Order PO- 3973, *supra* note 4 at para 112; Private Record of Proceedings, Tab 24 [Tab 4D of AR].

<sup>19</sup> Private Record of Proceeding, Tab 24 [Tab 4D of AR].

<sup>20</sup> Office of the Lieutenant Governor of Ontario, Media Advisory "Lieutenant Governor to Preside at Swearing-in of New Premier and Executive Council of Ontario," enclosing Premier's Recommendation Document and the Oath of Allegiance and Oath of the Executive Council (11 February 2013), online: *The Crown in Canada* <[http://www.canadiancrown.com/uploads/3/8/4/1/3841927/en-new\\_ministry\\_documents.pdf](http://www.canadiancrown.com/uploads/3/8/4/1/3841927/en-new_ministry_documents.pdf)>.

See also: Canada, Privy Council Office, "Oath of Privy Councilors in Canada," *Privy Council Office: Guidance for Ministers* (1984) at p 3 [Tab 1 of Book of Authorities ("BOA")].

<sup>21</sup> Letter from the Cabinet Office to the Commissioner dated December 13, 2018 and enclosed Representations of Cabinet Office ("Cabinet Submissions"), paras 6 [Tab 4B of AR].

<sup>22</sup> Order PO-3973, *supra* note 4 at para 77.

<sup>23</sup> Cabinet Submissions *supra* note 21 at para 6.

regulation(s);<sup>24</sup>and/or require funding.<sup>25</sup>

21. In addition to setting out the policy priorities, the Letters also include opinion, advice, instructions and guidance from the Premier to his newly appointed Cabinet ministers in respect of their ministerial duties and responsibilities. Each member of the Executive Council who received a Letter is accountable to the Premier and other Cabinet colleagues for assisting the government in achieving the policy objectives described in the Letters.<sup>26</sup> Cabinet collective responsibility is a key principle in the Westminster system of government (discussed further below).

**iv. The Decision of the IPC – Order PO 3973**

22. The central issue before the IPC was whether the Letters revealed the substance of Cabinet deliberations and were therefore exempt from disclosure under section 12(1) of the Act. Cabinet Office’s position was that the disclosure of the Letters would reveal the substance of deliberations in three stages of Cabinet policy development: (1) the Premier’s deliberations in setting Cabinet’s policy priorities which are indivisible from the deliberations of Cabinet; (2) the deliberations at the July 11, 2018, meeting of Cabinet when the Letters were placed on the agenda; and (3) the deliberations at future Cabinet meetings where the policy priorities set out in the Letters would return to Cabinet for further development, discussion and implementation.<sup>27</sup>

23. The IPC found that the Letters were not exempt under section 12(1). In interpreting the test of what records “would reveal the substance of deliberations” or would permit the drawing of accurate inferences with respect to those deliberations,<sup>28</sup> the IPC found that “deliberations” meant discussions conducted with a “view towards making a decision,” and “substance” meant more than the subject of the meeting.<sup>29</sup> This ignores section 12(1)(a) which exempts Cabinet agendas

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<sup>24</sup> Letter from Cabinet Office to the Commissioner, dated April 12, 2019, with copy of the Sur-sur-reply Representations from Cabinet Office (“Cabinet Sur-Sur Reply”) at para 35 [Tab 4C of AR].

<sup>25</sup> Treasury Board of Cabinet, a Cabinet Committee, oversees and approves all government’s financial management and spending.

<sup>26</sup> Cabinet Submissions, *supra* note 21 at para 8.

<sup>27</sup> Cabinet Submissions, *supra* note 21 at paras 18-22.

<sup>28</sup> Order PO-3973, *supra* note 4 at para 10.

<sup>29</sup> Order PO-3973, *supra* note 4 at para 90.

containing subjects/topics for discussion,<sup>30</sup> and the progressive nature of Cabinet policy development and deliberations which take place both inside and outside formal meetings with multiple interim “decisions” before a final decision is made.

24. In interpreting “substance of deliberations,” the IPC further ruled that subparagraphs (a) to (f) of section 12(1) “clarify that the exemption applies to specific types of records that might otherwise be thought to fall *outside* the opening words”<sup>31</sup> and that records that do not fall under the subparagraphs will only qualify for exemption if the context or other information would permit accurate inferences as to “*actual Cabinet deliberations at a specific Cabinet meeting*.”<sup>32</sup> This ignores the statutory word “including” and is a heightened test not found in the plain reading of section 12(1) and is contrary to the purpose of the Act and the exemption.

25. In response to Cabinet Office’s argument that the Letters would disclose the substance of the Premier’s deliberations,<sup>33</sup> the IPC found that section 12(1) did not protect the policies that resulted from the deliberations, i.e. the policies initiatives contained in the Letter, but rather protected the communications within the deliberative process.<sup>34</sup> In so doing, the IPC relied upon the “general approach” to the interpretation of “substance of deliberations” adopted by the NSCA in *O’Connor*.<sup>35</sup> This ignores the significant differences between the Ontario and Nova Scotia freedom of information statutes. Further, the policy initiatives are plainly not final policies, which are in any event protected from premature disclosure by the Act.<sup>36</sup>

26. In response to Cabinet Office’s arguments that the Letters would reveal the substance of deliberations of Cabinet at the July 11, 2018 meeting, the IPC found that the Letters were for individual ministers and not intended to, and there was no evidence that they did, serve as a basis

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<sup>30</sup> *FIPPA*, s12(1)(a).

<sup>31</sup> Order PO-3973, *supra* note 4 at para 102.

<sup>32</sup> Order PO-3973, *supra* note 4 at para 101.

<sup>33</sup> Order PO-3973, *supra* note 4 at paras 23-24.

<sup>34</sup> Order PO-3973, *supra* note 4 at paras 104, 108.

<sup>35</sup> Order PO-3973, *supra* note 4 at paras 97, 108.

<sup>36</sup> Record of decisions of Cabinet are exempted pursuant to section 12(1)(a) of *FIPPA* and records that contain proposed policies of an institution where disclosure can result in premature disclosure of a pending policy decision are exempted pursuant to section 18(1)(g) of *FIPPA*.

for discussions by Cabinet *as a whole*.<sup>37</sup> The IPC also found that the Letters did not reveal any views, opinions, thoughts, ideas and concerns expressed by Cabinet members in the course of the deliberative process<sup>38</sup> and merely indicated “topics” that may have arisen at the meeting<sup>39</sup> - the evidence of the Agenda was not sufficient. This ignores the absurd result arising from the disclosure of a record placed on a Cabinet agenda when the agenda is explicitly exempt; the Oath of Secrecy that each Cabinet minister is required to take; and the Letters which plainly contain the Premier’s views, opinions, thoughts, ideas and concerns.

27. In response to Cabinet Office’s arguments that the Letters comprised the “body of information”<sup>40</sup> that would reveal the substance of future deliberations of Cabinet, given Cabinet’s role in providing approval for key government decisions and policy implementation,<sup>41</sup> the IPC rejected that approach taken by the British Columbia Court of Appeal in *Aquasource*. Rather, it stated section 12(1) required evidence that the Letters, or specific parts, would be placed before Cabinet in future meetings.<sup>42</sup> There was no basis for the IPC to reject the “body of information” approach which is consistent with the context, text and purpose of the Act and exemption.

**v. The Divisional Court Decision**<sup>43</sup>

28. The Divisional Court dismissed Ontario’s application for judicial review of Order PO-3973. It regarded the case as a “sufficiency of evidence case.”<sup>44</sup>

29. Despite the IPC finding that section 12(1) did not protect “outcomes” of the deliberations of Cabinet,<sup>45</sup> the Divisional Court held that the decision was fact-specific and should not be taken to mean that there is a divide between the ‘outcome’ and the ‘substance of deliberations.’<sup>46</sup>

**vi. The Court of Appeal Decision**<sup>47</sup>

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<sup>37</sup> Order PO-3973, *supra* note 4 at paras 113-114.

<sup>38</sup> Order PO-3973, *supra* note 4 at para 115.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Aquasource*, *supra* note 6 at para 39.

<sup>41</sup> Order PO-3973, *supra* note 4 at para 91.

<sup>42</sup> Order PO-3973, *supra* note 4 at paras 97, and 116-117.

<sup>43</sup> Divisional Court Reasons, *supra* note 3.

<sup>44</sup> Divisional Court Reasons, *supra* note 3 at para 24.

<sup>45</sup> Order PO-3973, *supra* note 4 at para 104.

<sup>46</sup> Divisional Court Reasons, *supra* note 3 at para 25.

<sup>47</sup> OCA Decision, *supra* note 2.

30. Ontario sought and was granted leave to appeal to the OCA.

*The Majority*

31. The Majority dismissed the appeal. Specifically, the Majority found that the IPC’s narrow interpretation of section 12(1) was consistent with the purpose of the Act - to provide a right of access to information with exemptions that are “limited and specific.”<sup>48</sup> It also found that the term ‘including’ was ambiguous and that an “expansive” interpretation of that term, which would restrict the interpretation of “substance of deliberations” of Cabinet was consistent with other IPC decisions, and was reasonable.<sup>49</sup>

32. The Majority also agreed with the IPC that the Letters did not reveal the “deliberative process” of the Premier,<sup>50</sup> but rather contained “decisions” or a “culmination” of the Premier’s deliberative process which was not exempt under section 12(1).<sup>51</sup> The Majority further found that the IPC’s reliance on *O’Conner* was reasonable and it did not introduce a new balancing test.<sup>52</sup>

*The Dissent*

33. Justice Lauwers, writing for the Dissent, found the IPC’s interpretation of section 12(1) to be unreasonable - that its decision would “breach, erode or undermine” the established conventions and traditions of Cabinet government, contrary to legislative intent and the purpose of the exemption.<sup>53</sup> The Dissent found that the Letters were records that would reveal the “substance of deliberations” which included the topics, subject matters, things, or “body of information” Cabinet will be discussing, and as a result were exempted from disclosure by section 12(1).<sup>54</sup>

34. The Dissent found the purpose of the Cabinet records exemption was to establish a robust, well protected sphere of confidentiality within which Cabinet can function effectively<sup>55</sup> and that candour, solidarity and confidentiality were essential building blocks for Cabinet governments.<sup>56</sup> The Dissent examined the Williams Report and the legislative history of the exemption and

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<sup>48</sup> OCA Decision, *supra* note 2 at para 52.

<sup>49</sup> OCA Decision, *supra* note 2 at paras 50-51.

<sup>50</sup> OCA Decision, *supra* note 2 at para 76.

<sup>51</sup> *Ibid.*

<sup>52</sup> OCA Decision, *supra* note 2 at paras 82-84 and 86.

<sup>53</sup> OCA Decision, *supra* note 2 at para 93.

<sup>54</sup> OCA Decision, *supra* note 2 at paras 94, 208-210.

<sup>55</sup> OCA Decision, *supra* note 2 at paras 93, 149.

<sup>56</sup> OCA Decision, *supra* note 2 at paras 128-131.

concluded that the Legislature made a deliberate choice to make section 12(1) of the Act broader in scope and even more protective of Cabinet deliberations than recommended by the Williams Commission.<sup>57</sup> The Dissent also found that the text of the Act, specifically the exemption being mandatory (versus discretionary) and excluded from the public interest override provision (section 23) in the Act, reinforces the legislative intent and purpose that the exemption be broadly protective of Cabinet confidentiality.<sup>58</sup>

35. The Dissent determined that the “illustrative approach” to the term “including,” which results in a broader interpretation of the “substance of deliberations” to include topics, subject matters, or things Cabinet will be discussing, was consistent with the purpose of the exemption.<sup>59</sup> Similarly consistent, was the “body of information” approach adopted by the BCCA in *Aquasource*.<sup>60</sup>

36. The Dissent found that, given the text, context and purpose of Ontario’s Act and the salient differences between it and the Nova Scotia Act, there was no basis for the IPC to prefer the *O’Connor* approach to that of *Aquasource*.<sup>61</sup> The Dissent also ruled that the IPC’s finding that the Letters would not reveal the substance of deliberations of the Premier ignored the unique role of the Premier in Cabinet government and was based on the erroneous propositions that the substance of deliberations did not include “outcomes” of deliberations<sup>62</sup> and that the Premier’s deliberations were divisible from the deliberations of Cabinet as “as a whole.”<sup>63</sup>

37. The Dissent further found that the IPC’s heightened test of “actual deliberations at a specific meeting” was erroneously adopted from Order PO-1725 and was plainly unreasonably;<sup>64</sup> as was requiring evidence from a Cabinet minister.<sup>65</sup> The Dissent concluded that the result was a “deconstructive exercise,” inconsistent with the purpose of the exemption and the functioning of Cabinet government, and precisely the mischief that section 12(1) was designed to prevent.<sup>66</sup>

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<sup>57</sup> OCA Decision, *supra* note 2 at para 147.

<sup>58</sup> OCA Decision, *supra* note 2 at paras 141, 147.

<sup>59</sup> OCA Decision, *supra* note 2 at paras 157-158.

<sup>60</sup> OCA Decision, *supra* note 2 at paras 159-160.

<sup>61</sup> OCA Decision, *supra* note 2 at paras 161-162.

<sup>62</sup> OCA Decision, *supra* note 2 at paras 172-175.

<sup>63</sup> OCA Decision, *supra* note 2 at paras 177-179.

<sup>64</sup> OCA Decision, *supra* note 2 at paras 193-194, 208-210.

<sup>65</sup> OCA Decision, *supra* note 2 at paras 201-202.

<sup>66</sup> OCA Decision, *supra* note 2 at paras 198-202.

## PART II – QUESTION IN ISSUE

38. Ontario requests leave to appeal with respect to the following issue:

- i. Are confidential communications in respect of policy initiatives and development, prepared by the Premier of Ontario for his Cabinet ministers, protected by the Cabinet records exemption in the Act?*

## PART III – STATEMENT OF ARGUMENT

### **The Protection of Confidential Communications in Respect of Policy Initiatives Between the Premier and his Cabinet Ministers is Consistent with the Context, Text and Purpose of the Act and Exemption**

39. The Supreme Court of Canada in *Vavilov*<sup>67</sup> provides that a statutory provision must be interpreted in light of its text and context, as well as its purpose. The IPC unreasonably interpreted section 12(1) narrowly and restrictively, inconsistent with context, text and purpose of the Act and the Cabinet records exemption. In so doing, it made multiple errors in statutory interpretation, adopted interpretive approaches to the exemption that were inappropriate, and adopted a new and unreasonable heightened test for the exemption. It also resulted in the disclosure of confidential communications in respect of policy initiatives and development between the Premier and his Cabinet Ministers that the Legislature clearly intended to be protected from disclosure.

#### ***a. The Purpose of the Cabinet Records Exemption: Broadly Protecting the Confidentiality of Cabinet Deliberations***

40. The purpose of the Act is to “facilitate democracy” and improve the workings of government. The purpose of the Cabinet records exemption is to establish a robust and well-protected sphere of confidentiality within which Cabinet can function effectively. Cabinet confidentiality is fundamental to the proper functioning of responsible government where responsible ministers collectively decide government’s policy.<sup>68</sup> It is “one of the cornerstones of the Westminster system of government” safeguarded by convention, common law and statute law

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<sup>67</sup> *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 120-121 (“*Vavilov*”).

<sup>68</sup> *Babcock v Canada (Attorney General)*, 2002 SCC 57 at paras 15 and 18.

in Canada.<sup>69</sup> This purpose is reflected in the context and text of the Act and exemption.

*i. The Williams Report*

41. In 1980, the Williams Commission was established to examine and make recommendations to inform the development of access to information and privacy legislation in Ontario.<sup>70</sup> It issued a report, which formed the basis of the Act, titled *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy* (“Williams Report”).<sup>71</sup> It recognized that changes to access to government information practices had to be compatible with Ontario’s “parliamentary traditions”<sup>72</sup> and the constitutional conventions related to the effective functioning of Cabinet - candour, solidarity and confidentiality.<sup>73</sup>

42. The Williams Commission was concerned that the “routine disclosure of Cabinet deliberative materials” would bring an abrupt and undesirable end to the tradition of collective ministerial responsibility.<sup>74</sup> It recognized that Cabinet secrecy was necessary “for full and frank discussion of all aspects of a problem, to make concessions to one another, to seek the best and appropriate solution and then to enunciate it with one voice so that the public is not confused” and to permit more vigorous and uninhibited debate.<sup>75</sup> It also recognized the need of the elected government to control when and how its decisions are publicly announced.<sup>76</sup> It concluded that a Cabinet records exemption was necessary and in the public interest to protect the efficacy and candour of Cabinet deliberations and to ensure the proper functioning of Cabinet governments.<sup>77</sup>

43. Although the Legislature adopted many of the Williams Commissions’ recommendations

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<sup>69</sup> Nicolas D’Ombrain, “Cabinet Secrecy” (2004) 47:3 Canadian Public Administration 332 at 333[Tab 2 of BOA].

<sup>70</sup> Government of Ontario, *The Report of the Commission on Freedom of Information and Individual Privacy*, (Toronto: Ministry of Government Services, 1980) (“Williams Report”), p 53 [Tab 3 of BOA].

<sup>71</sup> *Ibid.* See *Ontario (Public Safety and Security) v Criminal Lawyers' Association*, 2010 SCC 23 at paras 27 and 55.

<sup>72</sup> Williams Report, *supra* note 69 at pp 83 and 85.

<sup>73</sup> OCA Decision, *supra* note 2 at para 128.

<sup>74</sup> Williams Report, *supra* note 70 at p 284.

<sup>75</sup> Williams Report, *supra* note 70 at pp 84-85.

<sup>76</sup> Williams Report, *supra* note 70 at pp 84-85, 188-190, 235, 284-286.

<sup>77</sup> Williams Report, *supra* note 70 at p 85.

in respect of the Cabinet records exemption, it is broader in several ways, demonstrating the legislative intent to broadly protect Cabinet confidentiality.<sup>78</sup> For example, the Williams Report suggested limiting section 12(1)(b) to records that contain proposals or recommendations submitted or prepared for submission by a Cabinet Minister to Cabinet. The Act instead more broadly protects all policy options or recommendations submitted to or prepared for the Executive Council.

*ii. The Legislative History and Text of the Act*

44. The legislative intent to broadly protect Cabinet confidentiality is also seen in the legislative debates for Bill 34<sup>79</sup>, the predecessor draft bill of the *Act*, where the proposal to restrict the Cabinet records exemption by adding the word “solely,” to limit its scope to an enumerated list of records, was defeated.<sup>80</sup> Notably, the prior draft Bill 80 also proposed a similar restriction but that Bill was not enacted and was replaced with Bill 34.<sup>81</sup> A deliberate choice was made by the Legislature to preserve the scope of section 12(1) to broadly protect Cabinet confidentiality.<sup>82</sup>

45. Similarly, the text of the exemption and the Act are also indicative of the Legislature’s intent to broadly protect Cabinet confidentiality. There are sixteen exemptions. Out of those 16 exemptions, the institution is permitted to disclose when there is “compelling public interest in disclosure that clearly outweighs the purpose for the exemption.”<sup>83</sup> However, this “public interest override” is not applicable to seven exemptions.<sup>84</sup> Out of those seven exemptions excluded from the public interest override, the Cabinet records exemption is the only exemption that is mandatory

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<sup>78</sup> OCA Decision, *supra* note 2 at para 147 and Appendix.

<sup>79</sup> Bill 34, *An Act to provide for the Freedom of Information and Protection of Privacy Act*, 1st Sess, 33rd Parl, 1985 (first reading 12 July 1985).

<sup>80</sup> Ontario Legislative Assembly, *Official Report of Debates (Hansard)*, 33rd Parl, 1st Sess, No 113 (10 February 1986), (Norman Sterling) (“*Hansard* (10 February 1986)”) [Tab 4 of BOA].

<sup>81</sup> Bill 80, *An Act to Provide for a Right of Access to Government Information in Ontario and to provide Protections respecting the Collection and Use of Personal Information*, 4th Sess, 32nd Parl, 1984, cl 16 (first reading 24 May 1984).

<sup>82</sup> *Hansard* (10 February 1986) *supra* note 80 (Norman Sterling).

<sup>83</sup> *FIPPA*, at s 23.

<sup>84</sup> *FIPPA*, at ss 12, 12(1)(a), 12(1)(d), 12(1)(e), 12(2), 14, 14.1, 14.2, 15, 15.1, 16, 19, and 22.

– there is no discretion for the institution to disclose the records.<sup>85</sup> This is a clear and unequivocal indication by the Legislature of the significance and importance of the Cabinet records exemption, above all other exemptions in the Act, and its purpose to broadly protect Cabinet confidentiality.<sup>86</sup>

***b. The IPC Interpreted the “Substance of Deliberations” Narrowly and Restrictively Which is Inconsistent with the Context, Text and Purpose of Act and Exemption***

46. The IPC made multiple errors that resulted in an unreasonable narrowing and restrictive interpretation of section 12(1) and the “substance of deliberations.” All errors, set out below, are inconsistent with the context, text and purpose of the Act and exemption.

*i. Outcomes are Exempt from Disclosure under Section 12(1)*

47. The IPC unreasonably found that the policy initiatives contained within the Letters were “outcomes” of the Premier’s deliberations that were not protected from disclosure by section 12(1). In the IPC’s view, the “substance of deliberations” only include those communications that took place “during the process by which the policies of Cabinet...are formulated.”<sup>87</sup> It does not protect “subjects” or “product” of deliberations. In so finding, the IPC erroneously relied upon jurisprudence developed in other, distinguishable statutory contexts rather than the text of the Act.

48. The IPC erroneously relied upon the “general approach” to the interpretation of the “substance of deliberations” adopted by the NSCA in *O’Connor*<sup>88</sup> to find that “outcomes” were not protected by section 12(1). The IPC preferred the “general approach” of *O’Connor* (over the body of information approach in *Aquasource* – to be discussed further), stating that the Nova Scotia cabinet records exemption “aligns more closely with the language of [s 12(1)].”<sup>89</sup> This is incorrect. In fact, the NSCA in *O’Connor* described its statute as “unique” in Canada and “intended to give the public greater access to information than might otherwise be contemplated in the other provinces.”<sup>90</sup> There are also significant differences between the Nova Scotia and Ontario statutes;

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<sup>85</sup> Section 16 of *FIPPA* grants the institution discretion to disclose records with prior approval from Cabinet.

<sup>86</sup> *FIPPA*, s 12(2).

<sup>87</sup> Order PO-3973 *supra* note 4 at para 104.

<sup>88</sup> Order PO-3973 *supra* note 4 at para 97, 108.

<sup>89</sup> *Ibid* at para 97.

<sup>90</sup> *O’Connor*, *supra* note 5 at paras 54, 57, 58.

including, the Nova Scotia exemption is discretionary<sup>91</sup> and subject to a public interest override provision,<sup>92</sup> and its purpose is more comprehensive and committed to disclosure.<sup>93</sup>

49. The IPC also erroneously relied on jurisprudence interpreting section 6(1)(b) of the *Municipal Freedom of Information and Protection of Privacy Act* (“MFIPPA”)<sup>94</sup> to conclude that records that reveal the “subject” or “product” of deliberations do not reveal the “substance of deliberations” of Cabinet.<sup>95</sup> Under the MFIPPA, a head may refuse to disclose a record that “reveals the substance of deliberations” of an *in camera* meeting of a municipal council.<sup>96</sup> However, the section 6(1)(b) exemption is unrelated to Cabinet records and does not engage the constitutional conventions surrounding Cabinet confidentiality.<sup>97</sup> In fact, municipal council meetings are required to be public - *in camera* meetings are limited and prescribed.<sup>98</sup> The application of jurisprudence arising from section 6(1)(b) of the MFIPPA, to section 12(1) of the Act is not appropriate.

50. Further, “outcomes” are clearly exempt from disclosure under section 12(1)(a) of the Act which exempts records of “an agenda, minute, or *other record* of the *deliberations or decisions* of the Executive Council or committees.” The words “deliberations or decisions” are broad enough to include the outcome of deliberations as well as the deliberations themselves. Also, the word “decisions” must be given a different meaning from the word “deliberations”, otherwise it would be redundant.<sup>99</sup> A plain reading of section 12(1), in light of subparagraph (a), demonstrates the Legislature’s intention to protect from disclosure the outcome of a deliberative process.

*ii. The Premier’s Deliberations are Indivisible from Deliberations of Cabinet*

51. The IPC unreasonably found that because the Letters were not distributed to Cabinet “as a

<sup>91</sup> *Freedom of Information and Protection of Privacy Act*, SNS 1993, c 5, s 13(1) [*Nova Scotia FIPPA*].

<sup>92</sup> *Nova Scotia FIPPA*, s 31.

<sup>93</sup> *O’Connor*, *supra* note 5 at para 54.

<sup>94</sup> *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M 56 (“MFIPPA”).

<sup>95</sup> Order PO-3973 *supra* note 4 at paras 133-134.

<sup>96</sup> MFIPPA, s 6(1)(b). The exemption specifically requires a meeting to have taken place.

<sup>97</sup> OCA Decision, *supra* note 2 at para 172, fn 94.

<sup>98</sup> *Municipal Act*, 2002, SO 2001, c.25, s 239(1) and (2).

<sup>99</sup> *John Doe v Ontario (Minister of Finance)*, 2014 SCC 36 at para 24.

whole,” they would not reveal the substance of deliberations of Cabinet.<sup>100</sup> This is contrary to the plain reading of section 12(1). Moreover, consistent with the Premier’s constitutional role as First Minister and duties to establish the agenda and policy priorities of Cabinet, records that reveal the substance of the Premier’s deliberations also reveal the deliberations of Cabinet as a whole.

52. In PO-1725, former Assistant Commissioner Tom Mitchinson determined that the constitutional conventions and traditions surrounding the Premier’s role in setting the policy priorities and agenda of Cabinet must be considered when assessing section 12(1). He also found that a record that reflects the Premier’s deliberations, in establishing Cabinet’s policy priorities, will be exempt pursuant to section 12(1).<sup>101</sup> The Dissent in the OCA Decision agreed that the deliberations of the Premier were indivisible from the deliberations of Cabinet<sup>102</sup>.

53. The Dissent found that the role of the Premier in setting Cabinet’s agenda and establishing policy priorities is critical to the effective functioning of Cabinet government. Hence, the “drawing of lines” between the Premier’s deliberative process and that of the rest of Cabinet did not respect the functioning of Cabinet government or the purpose of the exemption.<sup>103</sup> The Dissent concluded that the Letters revealed the substance of the Premier’s deliberations in formulating policies priorities and hence, also revealed the substance of deliberation of Cabinet as a whole.

*iii. Section 12’s Subparagraphs are Illustrative of the Scope of the “Substance of Deliberations”*

54. The IPC erroneously ruled that subparagraphs (a) to (f) of section 12(1) “clarify that the exemption applies to specific types of records that might otherwise be thought to fall *outside* the opening words.”<sup>104</sup> It adopted an expansive approach to the interpretation of the term “including” which unreasonably narrowed the scope of the “substance of deliberations;” disregarded the subsections and was inconsistent with the purpose of the exemption and legislative intent.

55. The use of the word “includes” is often found in statutory definitions where a general term is followed by a more specific list of terms. In this context, the term “including” can be expansive or illustrative. An illustrative list results in a broad interpretation of the preceding term while an

<sup>100</sup> Order PO-3973 *supra* note 4 at paras 113-114.

<sup>101</sup> IPC Order PO-1725 at 15 (“Order PO-1725”).

<sup>102</sup> OCA Decision, *supra* note 2 at para 170.

<sup>103</sup> OCA Decision, *supra* note 2 at para 178.

<sup>104</sup> Order PO-3973 *supra* note 4 at para 102.

expanded list results in a narrow interpretation of the preceding term.<sup>105</sup>

56. In the Cabinet records exemption, the term “including” is preceded by “would reveal the substance of deliberations” and is followed by a specific list of records in subparagraphs (a) to (f). The French version of the Act shows that the Legislature intended for the term “include” to be illustrative, and hence the preceding term “would reveal the substance of deliberations” is to be broadly interpreted:

**Documents du Conseil exécutif**

12 (1) La personne responsable refuse de divulguer un document qui aurait pour effet de révéler l’objet des délibérations du Conseil exécutif ou de ses comités, *notamment...*  
[emphasis added]

57. The word “including” in the English version of section 12(1) is translated in the French version of the Act as “notamment,” which has the following meanings in French: “in a way which is worth noting,” “among other things,” “notably,” “especially,” or “particularly.”<sup>106</sup> The use of the word “notamment” is consistent with the illustrative approach to the term “including” and hence a broad interpretation of the preceding term “would reveal the substance of deliberations.”

*iv. The IPC Erroneously Established a Heightened Test of Section 12(1)*

58. The IPC unreasonably established a heightened test for section 12(1) that requires evidence of “actual deliberation” at a “specific Cabinet meeting.”<sup>107</sup> The IPC further specified that evidence of “actual discussions” was required in this case. However, this heightened test is contrary to existing IPC cases and inconsistent with a plain reading of section 12(1), which only requires the records to “reveal the substance of deliberations” of Cabinet, and the purpose of the exemption.

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<sup>105</sup> Ruth Sullivan, *Sullivan On the Construction of Statutes*, 6th ed (Markham On): LexisNexis Canada, (2014) at paras 4.40 and 4.43 [Tab 5 of BOA].

<sup>106</sup> “notamment”, *Cambridge Dictionary*, Cambridge University Press, 2020. See *Lavigne v Canada*, [2002] 2 SCR 773 at para 53 where this Court considers the use of the word “notamment” in a law enforcement exemption provision in the *Privacy Act* and finds that the use of the word makes it plain that the examples given are listen for clarification, and do not operate to restrict the general scope of the introductory phrase at issue.

<sup>107</sup> Order PO-3973 *supra* note 4 at para 101.

59. The test under the Cabinet records exemption is whether the record would reveal the substance of deliberations or whether it would permit the drawing of accurate inferences with respect to Cabinet deliberations.<sup>108</sup> This test is consistent with the plain reading of section 12(1).

60. In this case, the IPC erroneously adopted a heightened test of “actual deliberations” at a “specific Cabinet meeting” from PO-1725.<sup>109</sup> PO-1725 is about the electronic calendar entries of a senior staff member in the Premier’s Office which identified various meetings dealing with various subjects having a policy making dimension.<sup>110</sup> Unlike this case, the entries were not distributed at a Cabinet meeting, nor were they placed on a Cabinet agenda. In PO-1725, additional information was required of “actual deliberations at a specific Cabinet meeting” in order to draw accurate inferences as to the substance of the Premier’s deliberations in establishing Cabinet priorities.<sup>111</sup> PO-1725 did not purport to establish a new heightened test for section 12(1).

61. In this case, the IPC further elaborated that what was required was evidence that the Letters were discussed by Cabinet “as a whole” – the fact the Letters were distributed to individual members of Cabinet was not enough. However, requiring evidence from a Minister as to the “actual” discussion at that July 11, 2019 Cabinet meeting, in light of the Oath of Secrecy and Cabinet confidentiality, is unreasonable and not what is required by the exemption.

62. In another IPC decision, PO-2417, the requester argued that there was no evidence that a report attached to a Cabinet submission was actually discussed by a Cabinet committee. Assistant Commissioner Beamish, as he was then, found that “the introductory wording of section 12 does not require evidence that the record itself was discussed by Cabinet or one of its committees.”<sup>112</sup> Commissioner Beamish’s heightened test in this case is inconsistent with his decision in PO-2417.

63. The IPC’s heightened test is also inconsistent with the purpose of the exemption to broadly protect Cabinet confidentiality. The IPC’s heightened test would unreasonably narrow the scope of the exemption to an “irreducible core” of cabinet documents and result in a “deconstruction

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<sup>108</sup> IPC Order PO-2707 at 12; IPC Order PO-3932 at para 53.

<sup>109</sup> Order PO-3973 *supra* note 4 at para 101.

<sup>110</sup> Order PO-1725 *supra* note 100 at 15.

<sup>111</sup> Order PO-1725 *supra* note 100 at 16.

<sup>112</sup> IPC Order PO-2417 at 4.

exercise” that would be an unreasonable intrusion upon the functioning of Cabinet government. This is not what was intended by the Legislature and is contrary to the purpose of the Act. Sections 12(1)(a) to (f) exempt records/information that do not arise from specific meetings of Cabinet.<sup>113</sup>

*c. Conclusion*

64. If leave is granted, Ontario will argue that the IPC unreasonably interpreted the Cabinet records exemption narrowly and inconsistently with the context, text and purpose of the exemption. It is clear that the legislative intent for the Cabinet records exemption was to broadly protect Cabinet confidentiality to ensure the proper functioning of Cabinet, while respecting parliamentary traditions. The IPC’s finding that confidential communications between the Premier and his Cabinet ministers, through Letters placed on a Cabinet agenda and distributed at a Cabinet meeting, are not protected by the exemption is a dangerous incursion into Cabinet proceedings. It is also an unreasonable narrowing of the exemption, contrary to legislative intent. Ensuring that legislative intent is respected and the purpose of the exemption maintained is of public importance for this Honourable Court’s consideration.

65. Further, this Court’s consideration of whether the Premier’s deliberations can reveal the substance of deliberations of Cabinet as a whole, is of public importance that is relevant to all provinces. The Court’s clarification on the purpose, scope and nature of Cabinet records is of public importance for all the above reasons.

**PART IV – COSTS**

66. Ontario seeks its costs of this Application.

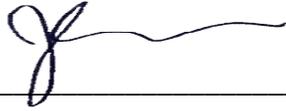
**PART V – ORDER SOUGHT**

67. Ontario respectfully requests that leave to appeal be granted from the decision of the Court of Appeal, dated January 26, 2022, with costs.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 28 day of March 2022.

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<sup>113</sup> FIPPA, s 12(1)(d) and (e) refer to records relating to consultations among Ministers and s 12(1)(f) refers to draft legislation and regulations, all without reference to a specific meeting of Executive Council.



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## PART VI – TABLE OF AUTHORITIES

Caselaw:

No.	Authority	Paragraph Reference
1.	<i>Aquasource Ltd v Freedom of Information and Protection of Privacy Commissioner for the Province of British Columbia</i> , <u>1998 CanLII 6444</u> , [1999] 6 WWR 1 (BC CA)	7, 27
2.	<i>Attorney General for Ontario v Information and Privacy Commissioner</i> , <u>2020 ONSC 5085</u> (Div Ct)	2, 28, 29
3.	<i>Babcock v Canada (Attorney General)</i> , <u>2002 SCC 57</u>	40
4.	<i>Canada (Minister of Citizenship and Immigration) v Vavilov</i> , <u>2019 SCC 65</u>	39
5.	<i>John Doe v Ontario (Minister of Finance)</i> , <u>2014 SCC 36</u>	50
6.	<i>Lavigne v Canada</i> , [2002] 2 SCR 773	57
7.	<i>O'Connor v Nova Scotia</i> , <u>2001 NSCA 132</u>	7, 48
8.	<i>Ontario (Attorney General) v Ontario (Information and Privacy Commissioner)</i> , <u>2022 ONCA 74</u>	2, 8-9, 13, 31-37, 41, 43, 49, 52-53
9.	<i>Ontario (Public Safety and Security) v Criminal Lawyers' Association</i> , <u>2010 SCC 23</u>	41
10.	<u>Order PO-1725</u>	52, 60
11.	<u>Order PO-2417</u>	62
12.	<u>Order PO-2707</u>	59
13.	<u>Order PO-3932</u>	59
14.	<u>Order PO-3973</u>	2, 17, 19, 23, 24, 25, 26, 27, 29, 47, 48, 49, 51, 54, 58, 60

Secondary Sources:

No.	Secondary Source	Paragraph Reference
1.	Canada, Privy Council Office, "Oath of Privy Councilors in Canada," <i>Privy Council Office: Guidance for Ministers</i> (1984)	18
2.	Government of Ontario, <i>The Report of the Commission on Freedom of Information and Individual Privacy</i> (Toronto: Ministry of Government Services, 1980)	34, 41-43

No.	Secondary Source	Paragraph Reference
3.	Nicolas D’Ombrain, “Cabinet Secrecy” (2004) 47:3 Canadian Public Administration 332	40
4.	Office of the Lieutenant Governor of Ontario, Media Advisory “Lieutenant Governor to Preside at Swearing-in of New Premier and Executive Council of Ontario,” enclosing Premier’s Recommendation Document and the Oath of Allegiance and Oath of the Executive Council (11 February 2013), online: <i>The Crown in Canada</i> < <a href="http://www.canadiancrown.com/uploads/3/8/4/1/3841927/en-new_ministry_documents.pdf">http://www.canadiancrown.com/uploads/3/8/4/1/3841927/en-new_ministry_documents.pdf</a> >	18
5.	Ontario Legislative Assembly, Official Report of Debates (Hansard), 33rd Parl, 1st Sess, No 113 (10 February 1986)	44
6.	Ruth Sullivan, <i>Sullivan On the Construction of Statutes</i> , 6th ed (Markham: LexisNexis Canada, 2014)	55

## Statutes, Regulations, Rules, etc.:

No.	Statute, Regulation, Rule, etc.	Section, Rule, Etc.
1.	<u>Bill 34</u> , <i>An Act to provide for the Freedom of Information and Protection of Privacy Act</i> , 1st Sess, 33rd Parl, 1985 (first reading 12 July 1985).	
2.	<u>Bill 80</u> , <i>An Act to Provide for a Right of Access to Government Information in Ontario and to provide Protections respecting the Collection and Use of Personal Information</i> , 4th Sess, 32nd Parl, 1984, cl 16 (first reading 24 May 1984).	Clause <u>16</u>
3.	<i>Freedom of Information and Protection of Privacy Act</i> , R.S.B.C. 1996, c. 165	Section <u>12(1)</u>
4.	<i>Freedom of Information and Protection of Privacy Act</i> , R.S.O. 1990, c. F.31	Sections <u>1</u> , <u>12</u> , <u>12(1)(a)</u> , <u>12(1)(d)</u> , <u>12(1)(e)</u> , <u>12(2)</u> , <u>14</u> , <u>14.1</u> , <u>14.2</u> , <u>15</u> , <u>15.1</u> , <u>16</u> , <u>19</u> , <u>22</u> , <u>23</u>
	<i>accès à l'information et la protection de la vie privée (Loi sur l')</i> , L.R.O. 1990, chap. F.31	L' Article <u>1</u> , <u>12</u> , <u>12(1)(a)</u> , <u>12(1)(d)</u> , <u>12(1)(e)</u> , <u>12(2)</u> , <u>14</u> , <u>14.1</u> , <u>14.2</u> , <u>15</u> , <u>15.1</u> , <u>16</u> , <u>19</u> , <u>22</u> , <u>23</u>
5.	<i>Freedom of Information and Protection of Privacy Act</i> , S.N.S. 1993, c. 5	Sections <u>13(1)</u> , <u>31</u>

6.	<i>Freedom of Information and Protection of Privacy Act</i> , <u>S.P.E.I. 2001, c. 37</u>	Section 20(1)
7.	<i>Freedom of Information and Protection of Privacy Act</i> , <u>R.S.A. 2000, c. F-25</u>	Section 22(1)
8.	<i>Municipality Act</i> , 2002, <u>S.O. 2001, c.25</u>	Sections <u>239(1), 239(2)</u>
	<i>municipalités (Loi de 2001 sur les)</i> , <u>L.O. 2001, chap. 25</u>	L' Article <u>239(1), 239(2)</u>
9.	<i>Municipal Freedom of Information and Protection of Privacy Act</i> , <u>R.S.O. 1990, c. M.56</u>	Section <u>6(1)(b)</u>
	<i>accès à l'information municipale et la protection de la vie privée (Loi sur l')</i> , <u>L.R.O. 1990, chap. M.56</u>	L' Article <u>6(1)(b)</u>
10.	<i>Right to Information and Protection of Privacy Act</i> , <u>S.N.B. 2009, c. R-10.6</u>	Section <u>17(1)</u>
	<i>loi sur le droit à l'information et la protection de la vie privée (L.N.-B. 2009, ch. R-10.6)</i>	L' Article <u>17(1)</u>
11.	<i>The Freedom of Information and Protection of Privacy Act</i> , <u>S.M. 1997, c. 50</u>	Sections <u>19(1), 76.2(1)</u>
	<i>loi sur l'accès à l'information et la protection de la vie privée et modifications corrélatives</i> , <u>L.M. 1997, c. 50</u>	L' Article <u>19(1), 76.2(1)</u>