File Number: 40078

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

B E T W E E N:

ATTORNEY GENERAL FOR ONTARIO

Applicant
(Appellant)

and

INFORMATION AND PRIVACY COMMISSIONER and
CANADIAN BROADCASTING CORPORATION

Respondents
(Respondents)

MEMORANDUM OF ARGUMENT
(CANADIAN BROADCASTING CORPORATION, RESPONDENT)

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PART I - OVERVIEW & STATEMENT OF FACTS

1. In July 2018, the Respondent Canadian Broadcasting Corporation ("**CBC**") requested access to the mandate letters prepared by the newly-elected Premier of Ontario ("**Letters**"). In a sharp break with previous Ontario governments, and with other federal, provincial, and territorial governments,[1] the Cabinet Office ("**CO**") refused to release the Letters. It relied solely on the exemption in the opening words of s. 12(1) of Ontario's *Freedom of Information and Protection of Privacy Act*[2] ("***Act***"), which applies to records where "disclosure would reveal the substance of deliberations of the Executive Council or its committees" ("**Opening Words Exemption**").

2. Applying the longstanding test for the Opening Words Exemption—one that has been applied for decades and that the CO accepted—the Information and Privacy Commissioner of Ontario ("**IPC**") held that the exemption did not apply. The IPC explained his decision in reasons that the courts below described as "thorough and cogent"[3] and "detailed"[4] ("**IPC Decision**").

3. After having its application for judicial review dismissed, and unsuccessfully appealing that decision to the Court of Appeal for Ontario, the Applicant now seeks leave to appeal. Leave should be denied. The proposed appeal raises no question of public importance and is without merit. Moreover, granting leave would undermine the purposes of the *Act* by ensuring the Letters remain hidden from view until after the next provincial election on June 2, 2022.

4. At its core, this case boils down to factual issues around the sufficiency of evidence. Both on judicial review and before the Court of Appeal, the Applicant sought to reframe the issues, raising new arguments and adopting positions inconsistent with those advanced below. But as the Divisional Court aptly recognized: "This is entirely a case of the application of well-settled principles to the particular facts … This a sufficiency of evidence case, nothing more."[5] Even the lone dissenting judge at the Court of Appeal recognized that the case is "likely to be a one-off".[6] Such case-specific matters are not of sufficient importance to warrant this Court's consideration.

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[1] *Order PO-3973*, [2019] O.I.P.C. 155, at para. 35 [*IPC Decision*].
[2] R.S.O. 1990, c. F. 31.
[3] *Attorney General for Ontario v. Information and Privacy Commissioner*, 2020 ONSC 5085 (Div. Ct.), at para. 55 [*Div. Ct. Decision*].
[4] *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, 2022 ONCA 74, at para. 10 [*C.A. Decision*]
[5] *Div. Ct. Decision*, at para. 24 (emphasis added).
[6] *C.A. Decision*, at para. 100.

5. Despite the Applicant's efforts to make this case about issues of Cabinet confidentiality or the constitutional role of the Premier, those issues do not arise here. The Applicant has never articulated, much less proven, how disclosure of the Letters could undermine the functioning of Cabinet. Many other Canadian jurisdictions have adopted the same test for Cabinet records the Applicant now attacks, without any negative consequences. With respect to the role of the Premier, the IPC accepted the Applicant's position that the Opening Words Exemption could extend to the Premier's deliberations. He simply found that, on the evidentiary record, the CO had not satisfied the test in this particular case. None of this provides a basis for granting leave to appeal.

6. The proposed appeal will have limited impact, both within and beyond Ontario. The Applicant's arguments relate to unique language in the IPC's Ontario home statute, and ask this Court to consider that language on the deferential reasonableness standard. The central focus of the proposed appeal is on the "illustrative" interpretive approach—an argument never even made before the IPC and one that should not even be considered on its merits at this juncture.

7. The proposed appeal will not resolve any discrepancies regarding the application of Cabinet records exemptions. Privacy commissioners have applied broadly consistent tests, with any nuances readily explainable by differences in statutory text between jurisdictions.

8. The proposed appeal also lacks merit. The Applicant seeks to make arguments that were never raised before the IPC, and which have been roundly rejected by the courts below.

9. Finally, granting leave—or denying it after May 26, 2022—undermines the purposes of the *Act*. Pursuant to the IPC's latest stay decision ("**IPC Stay Decision**"), the IPC Decision remains subject to a stay until leave is denied.[7] As such, granting leave, or denying leave after May 26, 2022, will deprive the public of the opportunity to see the Letters until after Ontario's next election on June 2, 2022. Such an outcome would dramatically illustrate how "access delayed is access denied" and would frustrate the overarching statutory purpose of "facilitat[ing] democracy".[8]

10. CBC respectfully requests that this motion for leave to appeal be dismissed, with costs, as expeditiously as possible, and in any event on or before May 26, 2022.

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[7] *Attorney General v. IPC and CBC*, Extension of Stay of IPC Order PO-3973, February 18, 2022, at pp. 11-12, Book of Authorities, Tab 1 [*IPC Stay Decision*].
[8] *IPC Stay Decision*, at p. 10; *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403, at para. 61 [*Dagg*].

A. BACKGROUND FACTS

11. CBC accepts and adopts the Background Facts and Procedural History put forward in the IPC's response to this application.

12. In July 2018, a CBC journalist requested access to a copy of each of the mandate letters the newly-elected Premier drafted for all of Ontario's 22 ministries, and two non-portfolio responsibilities.[9]

13. In response, the CO denied access in full, relying on the Opening Words Exemption in s. 12(1) of the *Act*, which states: "A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of the Executive Council or its committees". Following this language and the word "including", the *Act* sets out six subparagraphs in s. 12(1)(a)-(f) describing specific records that are exempt. The CO did not rely on any of these to deny access.

14. CBC appealed the CO's denial to the IPC. Before the IPC, the CO accepted the longstanding legal test for the Opening Words Exemption[10]—one that the IPC has applied, without issue or controversy, for decades. That test asks whether "disclosure of the record would reveal the substance of deliberations of Cabinet or its committees, or … would permit the drawing of accurate inferences with respect to these deliberations".[11]

15. Although the CO bore the onus of proving a link between the Letters and the substance of Cabinet deliberations, it offered no evidence, apart from the Letters themselves and a "single, heavily redacted agenda" from the government's initial Cabinet meeting, suggesting that each Minister received a letter.[12] Crucially, there was no evidence that the Letters, or their contents, were discussed at any Cabinet meeting; were distributed to Cabinet as a whole, tabled, or even generally made available for discussion; or would be placed before Cabinet in future meetings.[13]

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[9] *IPC Decision*, at para. 1.
[10] Representations of Cabinet Office, at para. 44, Application Record of the Applicant ("**AR**"), Tab 4B, p. 211. See also: Representations of Cabinet Office, at paras. 17, 22, 45, 48, 50, 54, 65, AR, Tab 4B, pp. 201, 203, 212, 214-215, 218; Sur-Reply Representations of Cabinet Office at para. 25, AR, Tab 4C, p. 219.
[11] *IPC Decision*, at para. 10
[12] *Div. Ct. Decision*, at para. 36
[13] *IPC Decision*, at paras. 113-114, 116.

16. In a carefully reasoned and thorough 134-paragraph decision, the IPC granted CBC's request and ordered the CO to disclose the Letters.

17. The IPC Decision took careful account of the *Act*'s overall purpose, as well as the specific purpose underlying the opening words of s. 12(1): to promote the free and frank discussion among Cabinet members of issues coming before them for deliberation. As the IPC Decision notes, there was no debate between the parties that this is the purpose of the Opening Words Exemption.[14]

18. The IPC Decision also examined the text and context of s. 12(1)[15] (including the subparagraphs[16]), previous IPC decisions, as well as decisions of information and privacy commissioners across Canada[17], and the undesirable consequences flowing from the CO's proposed application of the Opening Words Exemption, which the IPC found would "lead to a far broader application of section 12(1) than could have been intended, with the result that all records revealing policy initiatives of Cabinet or the Premier would be exempt".[18]

19. Turning to the application of the Opening Words Exemption to the case before it, the IPC resolved the CO's arguments on the basis of the meagre evidentiary record put forward by the CO, the agreed-upon legal test, and the application of well-settled legal principles.

B. PROCEDURAL HISTORY

20. The Applicant sought judicial review of the IPC Decision. The Divisional Court noted that the parties agreed on the legal test to be applied.[19] The court found that this is a "sufficiency of evidence case" where "[t]he IPC simply held that, on the record, the government had failed to satisfy its evidentiary burden."[20] The court unanimously upheld the IPC Decision as reasonable.[21]

21. After granting the Applicant leave to appeal, a majority at the Court of Appeal ultimately dismissed the appeal and agreed with the Divisional Court that the IPC Decision was reasonable.

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[14] *IPC Decision*, at para. 86.
[15] *IPC Decision*, at paras. 89-104, 111.
[16] *IPC Decision*, at paras. 99-103.
[17] *IPC Decision*, at paras. 90, 93, 96-97, 100-101.
[18] *IPC Decision*, at para. 135.
[19] *Div. Ct. Decision*, at para. 19.
[20] *Div. Ct. Decision*, at para. 24.
[21] *Div. Ct. Decision*, at para. 55.

22. Justice Sossin (with Gillese J.A. concurring) explained that the IPC's interpretation of the Opening Words Exemption was consistent with the purposes of both the *Act* as a whole and s. 12(1) in particular. He pointed out that the IPC has been applying the same test for the Opening Words Exemption for over three decades and noted that "the IPC's consistency in its approach to its governing statute may be taken as an indicator of the reasonableness of this decision".[22] Quite apart from this consistency, the majority concluded that the IPC's interpretation was also reasonable on its own terms, as it reflected a justifiable explanation that was alive to the text, context, and purpose of the provision.[23] The majority also held that the IPC's application of the test to the matter before him was reasonable.[24]

23. Justice Lauwers dissented. While purporting to apply reasonableness review, he suggested that correctness review might apply—notwithstanding the Applicant's concession that it did not—and the substance of his approach reflects something far closer to correctness review.[25] He concluded that the IPC interpretation was unreasonable. Many of the arguments relied upon by Lauwers J.A. in reaching this conclusion were never raised by the Applicant before the IPC.[26]

PART II - STATEMENT OF QUESTIONS IN ISSUE

24. The issue on this application is whether the proposed appeal raises issues of sufficient public importance that warrant this Court's consideration. The CBC submits that it does not.

PART III - STATEMENT OF ARGUMENT

A. THIS WAS ALWAYS A CASE ABOUT THE SUFFICIENCY OF EVIDENCE

25. The Applicant's proposed appeal does not warrant a full hearing. Try as it might to frame its proposed questions as matters of law, the Applicant's true challenge is to the IPC's *application*

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[22] *C.A. Decision*, at para. 49.
[23] *C.A. Decision*, at para. 51.
[24] *C.A. Decision*, at para. 76.
[25] *C.A. Decision*, at paras. 103-108.
[26] See, for e.g.: *C.A. Decision*, at paras. 147 (language of *Act* is broader than recommendations in Williams Report), 172 (identical language in other Ontario access legislation is of "limited use"), 182 ("substance of the deliberative process" includes "subject matter under consideration"), 186 (mandate letters analogous to the records in subparagraphs 12(1)(d) and (e)), and 193-194 (IPC adopted new test requiring link to "actual Cabinet deliberations at a specific Cabinet meeting").

of the Opening Words Exemption to the particular facts of this case, as well as his factual findings. This kind of evidence-driven dispute does not require this Court's attention.

26. As the Divisional Court recognized: "This is entirely a case of the application of well-settled principles to the particular facts"; it is "a sufficiency of evidence case, nothing more".[27] The Applicant's attempt to recast the issues on its proposed appeal as legal issues—including by raising new arguments and resiling from its previous positions—does not address the central finding of the IPC, as upheld by the courts below: the almost non-existent record adduced by the CO simply failed to meet the decades-old legal test for the Opening Words Exemption.[28]

27. Apart from the Letters, the only evidence the CO adduced was a single redacted agenda from the initial Cabinet meeting. The IPC found that something more was required to discharge the CO's onus under the Opening Words Exemption, since "[t]here is nothing on the face of the letters or in the representations of the [CO] to indicate that the letters themselves were intended to serve, or did serve, as Cabinet submissions or as the basis for discussions by Cabinet as a whole."[29]

28. The Applicant's suggestion that it was not possible to adduce such evidence in this case due to the oath of Cabinet confidentiality is wrong. Sworn evidence from a Cabinet minister is not required. The IPC accepts evidence (including hearsay) in unsworn form, and allows for such evidence to be transmitted confidentially (i.e. without granting the requester access).[30] All that was required here was *some* evidence to establish that the Letters revealed the substance of past or future Cabinet deliberations, rather than the CO's equivocal submissions on this point.[31]

29. Indeed, the thin evidentiary record stands in stark contrast to past cases where the IPC has denied access based on the Opening Words Exemption. In such cases, institutions resisting access have adduced affidavit evidence attesting to documents being discussed by Cabinet during

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[27] *Div. Ct. Decision*, at para. 24.
[28] *C.A. Decision*, at para. 72.
[29] *IPC Decision*, at para. 113.
[30] See: the IPC's *Code of Procedure*, *Practice Direction No. 7*. The CO availed itself of these very tools to put the Letters, the agenda, and additional submissions before the IPC in this very case. For the same reason, Lauwers J.A.'s concerns are misplaced: *C.A. Decision*, at para. 201.
[31] *IPC Decision*, at paras. 95, 114 (noting the CO's position that "it would be reasonable to expect that the Premier's key messages… would have been discussed with Cabinet").

deliberations[32]; established that the records at issue were marked "Cabinet confidential" and were discussed and approved by a Cabinet committee[33]; or established that parts of the records were reviewed by several ministers and incorporated into submissions put before Cabinet committees.[34]

30. Given that the IPC Decision was founded on the nature, quality, and extent of the evidence (or lack thereof) put forward by the CO, this Court's consideration of the proposed appeal will have limited impact beyond the facts of this case. The jurisprudence demonstrates that these cases turn largely on their own facts. In the same way, future cases concerning access requests to other purported "cabinet records"—whether under the *Act* or other provincial access to information legislation—will be readily distinguishable based on the evidence adduced.

31. Even the lone dissenting judge below recognized that the decision is "likely to be a one-off" as future Premiers will either craft their mandate letters for public consumption or tie them more closely to Cabinet decision-making to ensure their confidentiality.[35] It is also likely to be a "one-off" because the CO will presumably advance a better evidentiary record, and adopt a different litigation strategy, before the IPC in future proceedings. The CO's latest response to CBC's request for the most recent batch of mandate letters bears this out, as the CO is no longer relying solely on the Opening Words Exemption, but a myriad of other exemptions as well.[36]

32. The narrow and ultimately fact-driven issues at the heart of this case do not require or warrant this Court's careful consideration.

B. BROADER ISSUES OF CABINET CONFIDENTIALITY DO NOT ARISE

33. The Applicant attempts to cast its proposed appeal as having wider implications, claiming that it reflects a "dangerous incursion into Cabinet proceedings" that will "result in changes to the functioning of Cabinet", while failing to articulate how or why this could be the case. In reality,

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[32] See, *e.g.*, *Order P-311*, [1992] O.I.P.C. 68; *Order PO-1725*, [1999] O.I.P.C. 153, at para. 59 [*Order PO-1725*]; *Order PO-2857*, [2009] O.I.P.C. 217, at paras. 16-17, 69 [*Order PO-2857*].
[33] See, for example, *Order PO-3977*, [2019] O.I.P.C. 154, at paras. 33-35, 37.
[34] See, for example, *Order P-226*, [1991] O.I.P.C. 18.
[35] *C.A. Decision*, at para. 100.
[36] In a letter to the CBC dated November 30, 2021, the CO advised that access to the latest mandate letters (issued following a Cabinet shuffle) is being denied based not only on s. 12(1), but also ss. 13(1), 18(1), and 19 of the *Act*.

the IPC Decision does no such thing. It does nothing more than apply a well-established test—one which the CO accepted before the IPC—to the particular facts in this case.

34. The IPC was acutely aware of the purpose of the Opening Words Exemption, which was never a matter of controversy. The IPC begins his interpretive analysis by recognizing that the purpose of the Opening Words Exemption—as accepted by both parties—is "to promote the free and frank discussion among Cabinet members of issues coming to them for decision, without concern for the chilling effect that might result from disclosure of their statements or the material on which they are deliberating".[37] He notes that this purpose also reflects the policy concerns expressed in the same authorities referenced by the Applicant in its leave submissions, including cases like *Babcock* (albeit in a different statutory context)[38] and the Williams Report. [39]

35. The Applicant has never articulated, much less proven, how disclosure of the Letters would undermine the purpose of s. 12(1) in this case. That is because it would not do so. As the majority in the court below put it: "The Letters do not threaten to divulge Cabinet's deliberative process or its formulation of policies."[40] Indeed, the IPC found that there was no persuasive evidence put before him—or even an argument from the CO—that disclosure of the Letters would give rise to any chilling effect on Cabinet deliberations (including the deliberations of the Premier).[41]

36. There is similarly no support for the Applicant's suggestion that the IPC Decision, if left to stand, will somehow impair the functioning of Cabinet. The IPC Decision breaks no new jurisprudential ground: as both levels of court below recognized, the IPC test reflects "settled law" that the IPC has applied to purported Cabinet records in Ontario for decades.[42]

37. The IPC Decision further emphasizes the limited implications of the ruling by making plain that the Opening Words Exemption may still apply in the *future* to records presented to Cabinet in respect of the subject matters raised in the Letters, noting that "proposals or other materials yet to be developed by individual ministers and later brought before Cabinet… may well reveal the

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[37] *IPC Decision*, at para. 86 (emphasis added).
[38] *Babcock v. Canada (Attorney General)*, 2002 SCC 57, at para. 18.
[39] *IPC Decision*, at paras. 86-87.
[40] *C.A. Decision*, at para. 76.
[41] *IPC Decision*, at para. 123.
[42] *C.A. Decision*, at paras. 44-45; *Div. Ct. Decision*, at para. 27.

substance of future Cabinet deliberations if and when they occur".[43] The IPC Decision merely concludes that the Letters themselves fail to meet this test.

38. Finally, the Applicant's own arguments undercut the proposition that the IPC Decision will somehow undermine how Cabinet operates. The so-called "*O'Connor*" approach that the Applicant claims the IPC erroneously applied in this case has been applied to Cabinet records in many other Canadian jurisdictions.[44] While CBC does not accept this characterization of the IPC Decision (for reasons discussed at paras. 52 and 70, below), even assuming that it is accurate, there is no suggestion from any source—judicial, academic, or political—that the ability of Cabinets to operate effectively have been impaired in jurisdictions that have adopted the *O'Connor* approach.

C. QUESTIONS OF THE PREMIER'S CONSTITUTIONAL ROLE DO NOT ARISE

39. The Applicant also argues that the IPC Decision fails to account for the "Premier's constitutional role as First Minister". This is a red herring. As the majority below recognized, the IPC accepted the CO's position on the Premier's constitutional role and his indivisibility from Cabinet, relying on the same case the Applicant now holds up as authoritative (PO-1725).[45] In particular, the IPC accepted PO-1725's holding that the Premier's deliberations *could* be exempt.[46]

40. All the IPC did was to conclude that the CO had failed to meet the test for the exemption *in this case.* Again, this is an evidentiary matter. The IPC distinguished this case from PO-1725 on the facts, recognizing that the records at issue in PO-1725—entries in the electronic calendar database maintained by one of the most senior staff in the Premier's office that "provided a roadmap revealing how and why policy choices were made by the Premier"[47]—"differ significantly" from the Letters.[48] Unlike the records in PO-1725, the Letters "would not provide any insight into the deliberative considerations or consultative process by which the Premier

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[43] *IPC Decision*, at para. 122.
[44] *Prince Edward Island (Education and Lifelong Learning) (Re)*, 2019 CanLII 71190 (PEI IPC), at paras. 23-24 [*Prince Edward Island*]; *Newfoundland and Labrador (Innovation, Trade and Rural Development) (Re)*, 2008 CanLII 31395 (NL IPC), at para. 63 [*Newfoundland and Labrador*].
[45] *C.A. Decision*, at paras. 69, 71; *IPC Decision*, at paras. 129-131.
[46] *IPC Decision*, at paras. 131-132.
[47] *IPC Decision*, at para. 130.
[48] *IPC Decision*, at para. 132.

arrived at them".[49] Both the Divisional Court and majority in the court below found the IPC was reasonable to distinguish PO-1725 from this case, based on the different records at issue.[50]

41. Ultimately, as with the rest of his decision, the IPC's conclusion that the Letters do not disclose the Premier's deliberations is a narrow one that was driven by the particular facts and evidentiary record in the present case. There is no dispute over the Premier's constitutional role or his relationship with Cabinet. The IPC accepted the CO's position on these issues. There is no question of public importance here; only a fact-driven dispute, confined to the circumstances of this case, that three levels of decision-makers have now resolved against the Applicant.

D. THE PROPOSED APPEAL WILL HAVE LIMITED IMPACT

42. The resolution of the questions the Applicant seeks to raise in the proposed appeal will have little or no impact within or beyond Ontario, further highlighting why the proposed appeal fails to raise a question of public importance. Beyond the fact that this is essentially a fact-driven dispute, as outlined above, there are three additional reasons for this conclusion.

43. ***First***, the very nature of the Applicant's central legal argument limits its application to Ontario. As in the court below, this argument is that the Opening Words Exemption should be read according to the "illustrative" rather than "expansive" approach. Under the illustrative approach, the Applicant argues that any records analogous to those in subparagraphs 12(1)(a)-(f) should be automatically exempt, regardless of—and without further inquiry into—whether those records would meet the test for the Opening Words Exemption.[51] The leading authorities make clear that whether a statutory provision should be read according to the illustrative or expansive approach will require the statutory text and context to be "analyzed with care".[52]

44. Ontario's statutory text and context is unique when it comes to the Cabinet records exemption. No other access to information legislation has a cabinet records exemption that is identical to the opening words and subsequent list of subparagraphs in s. 12(1). Section 12(1) of B.C.'s statute exempts disclosure of information "that would reveal the substance of deliberations

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[49] *IPC Decision*, at para. 132.
[50] *Div. Ct. Decision*, at para. 31; *C.A. Decision*, at para. 75.
[51] *C.A. Decision*, at para. 42.
[52] Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th Ed., at §. 8.76, Book of Authorities, Tab 2.

of the Executive Council or any of its committees, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or any of its committees".[53] Several other provinces have broadly similar legislation.[54] In Newfoundland and Quebec, the applicable legislation does not even provide for a general exemption covering the "substance of deliberations" of Cabinet.[55] While the Saskatchewan, Manitoba, and New Brunswick statutes contain lists of specific exemptions in subparagraphs similar to the *Act,* those exemptions are not identical to s. 12(1) of the *Act* (and the Saskatchewan statute does not even mention the "substance of deliberations").[56]

45. Accordingly, whatever approach the Court might endorse for the *Act* cannot be transposed across the country, and would be confined to the Ontario statute.

46. ***Second***, given that this case must be analyzed through the lens of reasonableness (as even the Applicant accepts), this Court will necessarily be limited in any guidance it is able to provide. This is not a case about constitutional interpretation or the scope of a privilege; it is a case of an expert administrative decision-maker interpreting the unique text of his provincial home statute. The IPC Decision is entitled to significant deference on review. Both a majority of the court below and the Divisional Court had no trouble finding that the IPC Decision fell squarely within the bounds of reasonableness. Leave need not be granted only for this Court to come to the same result.

47. ***Finally***, even if this Court were otherwise tempted to address the Applicant's illustrative approach argument, this case is not the right vehicle for that exercise. No mention of the illustrative approach was made before the IPC. At no point did the CO urge the IPC to depart from its decades-old jurisprudence adopting the expansive approach; in fact, the CO expressly submitted that "the use of the word 'including' in section 12(1) provides an expanded definition of the types of records deemed to be subject to the Cabinet records exemption", citing the IPC's seminal 1988 ruling

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[53] *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 ("*B.C. Act*") (emphasis added).
[54] *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, s. 22(1); *Freedom of Information and Protection of Privacy Act*, R.S.P.E.I. 1988, c. F-15.01, s. 20(1); *Freedom of Information and Protection of Privacy Act*, S.N.S. 1993, c. 5, s. 13(1).
[55] *Freedom of Information Act*, R.S.N.L. 1990, c. F-25, s. 9(1); *Act respecting Access to documents held by public bodies and the Protection of personal information*, C.Q.L.R. c. A-2.1, s. 33.
[56] *The Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. F-22.01, s. 16(1); *The Freedom of Information and Protection of Privacy Act*, C.C.S.M. c. F175, s. 19(1); *Right to Information and Protection of Privacy Act*, S.N.B. 2009, c. R-10.6, s. 17(1).

adopting the expansive (rather than illustrative) approach.[57] As set out above, and as the Divisional Court recognized, the proper legal test was not even a matter of controversy at first instance.[58]

48. Yet it is clear that this issue will be a focal point of the Applicant's proposed appeal, as it was in the court below, including by attempting to support the illustrative approach with all manner of additional arguments that were never put before the IPC—ranging from the French language version of the statute, to a review of the Hansard transcript.[59] While the majority in the court below properly recognized that these new arguments did nothing to detract from the ultimate reasonableness of the IPC Decision,[60] the more fundamental point is that these arguments should not even be *considered* at this late stage, whether on judicial review or on further appeal.

49. Accordingly, if leave is granted, this Court would be put to the unenviable choice of either refusing to entertain the illustrative vs expansive issue entirely, or addressing the issue (together with its array of supporting arguments) despite the fact that it was never put before the IPC. The former would render the appeal virtually devoid of any legal issues. The latter would be tantamount to usurping the role of the specialized decision-maker with statutory authority to decide such matters at first instance.[61] Respectfully, the IPC should be afforded an opportunity to fully consider these issues, in an appropriate case, before this Court addresses them.

E. THERE ARE NO JURISPRUDENTIAL INCONSISTENCIES

50. There are no disputes within Ontario or among appellate courts in this country that warrant granting leave to hear the proposed appeal. In fact, there is considerable consistency across the country in adopting the same established test for Cabinet records exemptions that the IPC applied in this case and the majority of the Court of Appeal concluded was reasonable.

51. The majority below determined that the IPC acted reasonably in adopting the long-standing and well-settled "accurate inferences" test for the Opening Words Exemption that both CBC and

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[57] Representations of Cabinet Office, at para. 13, AR, Tab 4B, p. 200; *Order 22*, [1988] O.I.P.C. 22, at p. 7 [*Order 22*].
[58] *Div. Ct. Decision*, at paras. 8, 19.
[59] See Memorandum of Argument of the Applicant, at paras. 44, 56-57; *C.A. Decision*, at paras. 55, 58.
[60] *C.A. Decision*, at paras. 56, 58.
[61] *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, at para. 24.

the CO accepted: a record will qualify for exemption if the context or other information would permit accurate inferences to be drawn as to the actual deliberations of Cabinet, including future deliberations.[62] The IPC has been applying this test consistently for over 30 years, [63] without any indication that it needs to be revisited. Again, no such suggestion was made by the CO in this case.

52. This is the same test that the Nova Scotia Court of Appeal adopted in *O'Connor* with respect to the Cabinet records exemption in its access to information legislation.[64] Although the Applicant attempts to characterize the IPC Decision as adopting and applying the *O'Connor* approach, a more accurate characterization would be that in *O'Connor*, the Court chose to follow the IPC's longstanding approach to the Opening Words Exemption.

53. Looking beyond Nova Scotia, information and privacy commissioners across the country have applied remarkably similar tests in interpreting their own Cabinet records exemptions under their equivalent home statutes, despite differences in legislative text.[65] This is not a situation where there is a deep jurisprudential divide in interpreting substantially identical legislation.

54. The Applicant references the B.C. Court of Appeal's 1998 decision in *Aquasource*, articulating a different test for the Cabinet records exemption under the *B.C. Act*. Specifically, in that case, Donald J.A. held that the exemption covered "the body of information which Cabinet considered (or would consider in the case of submissions not yet presented) in making a decision".[66] The "body of information" approach in *Aquasource* is a distinct outlier: it has not been followed by any information and privacy commissioner or court outside of British Columbia.

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[62] *IPC Decision*, at paras. 94, 101.
[63] *Order 22*; *Order P-226*, [1991] O.I.P.C. 18; *Order P-293*, [1992] O.I.P.C. 41, at pp. 9-10; *Order P-331*, [1992] O.I.P.C. 93, at p. 3; *Order P-361*, [1992] O.I.P.C. 152, at p. 3; *Order P-604*, [1993] O.I.P.C. 372, at p. 7; *Order P-901*, [1995] O.I.P.C. 148, at p. 5; Order PO-1678 (1999), Appeal PA-980207-1, at p. 5; *Order PO-1725*, at para. 48; *Interim Order PO-1742-I*, [2000] O.I.P.C. 7, at para. 36; *Order PO-2320*, [2004] O.I.P.C. 201, at paras. 25-26; Order PO-2554 (2007), Appeal PA-050028-2, at p. 6; *Order PO-2666*, [2008] O.I.P.C. 82, at paras. 11-12; *Order PO-2707*, [2008] O.I.P.C. 166, at paras. 55-56; *Order PO-2725*, [2008] O.I.P.C. 185, at paras. 14-15; *Order PO-2857*, at para. 28.
[64] *O'Connor v. Nova Scotia*, 2001 NSCA 132, at para. 92.
[65] *Prince Edward Island*, at paras. 23-24; *Newfoundland and Labrador*, at para. 63;*Order 97-010*, [1997] A.I.P.C.D. 14, at para. 30.
[66] *Aquasource Ltd. v. British Columbia (Freedom of Information and Protection of Privacy Commissioner)* (1998), 58 B.C.L.R. (3d) 61 (C.A.), at paras. 39, 48 [*Aquasource*].

55. In any event, the *Aquasource* decision does not reflect any true inconsistency with the present case, nor does it otherwise support this Court granting leave to appeal.

56. ***First***, the proposed appeal does not require choosing between the *Aquasource* approach and the "accurate inferences" test applied by the IPC. The IPC found, as a matter of fact, that even if *Aquasource* did articulate the proper test, the Letters do not constitute part of "the body of information which Cabinet considered".[67] This is not surprising: again, there was no evidence that the Letters, or their contents, were discussed at any Cabinet meeting, were distributed to Cabinet as a whole, were tabled or even generally made available for discussion, or would be placed before Cabinet in future Cabinet meetings.[68] By contrast, in *Aquasource*, "the senior policy analyst who prepared the document testified that the submission had been prepared at the request of Cabinet" and that it been discussed by Cabinet members at a Cabinet committee meeting.[69]

57. As the Divisional Court put it, the IPC's application of the *Aquasource* test was based "on an assessment of the evidence": "The IPC simply found that the [CO] had not discharged its burden to prove a link between the Letters and the substance of future Cabinet decisions. Given the paucity of evidence provided by the [CO], this was not an unreasonable conclusion".[70]

58. The outcome of the proposed appeal would be the same even if *Aquasource* were applied. As such, this is not the appropriate case to resolve any alleged discrepancies between the tests.

59. ***Second***, there is no true inconsistency between the IPC's longstanding approach to the Opening Words Exemption and *Aquasource*. The different tests can be explained by the differently worded exemptions. Section 12(1) of the *B.C. Act* contains fewer and broader categories of exemptions than the *Act*—including exemptions that are covered in entirely different sections of the *Act*[71]—and qualifies all of these exemptions with the phrase "submitted or prepared for submission" to Cabinet.[72] In other words, the *B.C. Act expressly focuses* on the information that

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[67] *IPC Decision*, at para. 117.
[68] *IPC Decision*, at paras. 113-114, 116.
[69] *Aquasource*, at para. 9.
[70] *Div. Ct. Decision*, at para. 49.
[71] For example, the *Act* addresses exemptions over advice and recommendations in s. 13.

[72] Section 12(1) of the *B.C. Act* states: "The head of a public body must refuse to disclose to an applicant information that would reveal the substance of deliberations of the Executive Council or

will be submitted to Cabinet, while the Ontario legislation does not. In *Aquasource*, the court specifically relied on these aspects of the statute in adopting the "body of information" approach.[73]

60. Further, the purposes of the two statutes are different. A purpose of the *Act* is that "necessary exemptions from the right of access should be limited and specific"[74]—a clear marker of legislative intent to narrowly restrict exemptions from a general right of access to information. The *B.C. Act* contains no such provision.[75]

61. ***Finally***, the B.C. and Ontario courts applied different standards of review. As *Aquasource* was decided in 1998, the court employed the now-outdated "pragmatic and functional approach" to select the correctness standard in reviewing the commissioner's interpretation of the legislation.[76] By contrast, the majority below—relying on this Court's more recent articulation of the law of judicial review in *Vavilov*,[77] as well as the agreement of the parties—applied the reasonableness standard to the IPC Decision.[78]

62. As a result, there is serious doubt as to whether *Aquasource* would be decided the same way today, applying the current approach to administrative law. The commissioner in *Aquasource* relied on earlier decisions of the IPC to conclude that "disclosure of a record would 'reveal' the substance of deliberations if it would permit the drawing of accurate inferences with respect to the substance of those deliberations"[79]—the same test that the IPC adopted in this case and the majority below concluded was reasonable. The court in *Aquasource* may well have reached the same conclusion as the majority below had it applied the same reasonableness standard.

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any of its committees, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or any of its committees."

[73] *Aquasource*, at para. 39.
[74] *Act*, s. 1(a)(ii).
[75] The *B.C. Act*'s purpose is to "make public bodies more accountable to the public and to protect personal privacy by", *inter alia*, "specifying limited exceptions to the right of access" (s. 2(1)(c)).
[76] *Aquasource*, at para. 28.
[77] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.
[78] *C.A. Decision*, at paras. 33-36.
[79] *Aquasource*, at para. 36.

F. THE PROPOSED APPEAL IS WITHOUT MERIT

63. Quite apart from the fact that the proposed appeal raises no question of national importance, it is also without merit. The Applicant's scattershot approach repeats arguments that have already been soundly rejected by both courts below, including new arguments not raised before the IPC.

64. ***IPC Decision is not unduly narrow.*** The IPC carefully considered the text and context of s. 12(1), as well as the purpose of s. 12(1) and the *Act* in general.[80] While the argument in favour of an illustrative approach was not made before him, he nevertheless explained why such an approach was inappropriate, consistent with decades of IPC jurisprudence.[81] In particular, the IPC concluded that subparagraphs 12(1)(a)-(f) clarify "that the exemption applies to specific types of records that might otherwise be thought to fall outside the opening words of section 12(1) because they do not obviously 'reveal the substance of deliberations of the Executive Council'".[82]

65. As the majority in the court below recognized, the IPC's "reasoned explanation" for his interpretation of the Opening Words Exemption was consistent with the overall purpose provisions of the *Act* (which require exemptions to be "necessary… limited and specific").[83] By contrast, the Applicant's broad interpretation is inconsistent with the overall purpose of the *Act* and this Court's guidance that exemptions to access are generally to be narrowly construed.[84] As the IPC recognized, if the legislature had intended to create a blanket exception for all documents or information provided to Cabinet or its members—which is effectively the position the Applicant advances in its proposed appeal—it could easily and clearly have done so.[85]

66. ***IPC Decision is consistent with legislative history***. In an argument never made before the IPC, the Applicant claims the legislative history reflects a "deliberate choice" to broadly protect Cabinet records, supportive of its illustrative approach. As the majority in the court below recognized, that is not so.[86] All the legislative history indicates is that the word "solely" was

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[80] *IPC Decision*, at paras. 86-87, 97, 105-109.
[81] *IPC Decision*, at paras. 100-103.
[82] *IPC Decision*, at para. 102 (emphasis added).
[83] *C.A. Decision*, at paras. 51-52.
[84] *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53, at para. 30 [*Lavigne*].
[85] *IPC Decision*, at paras. 109, 135; *C.A. Decision*, at para. 52; *Div. Ct. Decision*, at para. 30.
[86] *C.A. Decision*, at paras. 57-59.

changed to "including" in order to ensure the scope of s. 12(1) would not be limited to its subparagraphs—an uncontroversial proposition that all parties, and the IPC, accepted in this case.[87]

67. ***The absence of any "public interest override" militates against a broad reading***. The Applicant correctly notes that the Cabinet records exemption is one of seven exemptions to which the "public interest override" provision in s. 23 of the *Act* does not apply. But the Applicant has it backwards when arguing that this somehow supports a broad reading of the Opening Words Exemption. In *Merck Frosst*, the Court found that the legislative intention to ascribe "a narrower ambit" for an exemption under the federal *Access to Information Act* was "reinforced by the fact that the [ ] exemption is not subject to the public interest override in s. 20(6)".[88]

68. ***French language does not impact the analysis.*** In another argument not made before the IPC, the Applicant claims the French version of the *Act* supports its illustrative approach over the approach adopted by the IPC. Again, as the majority in the court below recognized, that is not so: the French words "neither rule in nor rule out either interpretive approach".[89]

69. ***Distinguishing between the outcome and substance of deliberations was justified in this case.*** The IPC Decision does nothing more than recognize that the outcomes of deliberations—without more—do not disclose their "substance". This proposition finds ample support in the legislative purposes, as well as prior IPC jurisprudence.[90] As the Divisional Court recognized: "[The IPC Decision] should not be understood *necessarily* to mean that disclosure of the thing cannot be revelatory of the 'substance of deliberations'. All the IPC concluded in this Decision, however, is that the 'outcome' of the Premier's Letters did not, as a matter of fact based on the evidence in this case, disclose the substance of any deliberations of the Premier or Cabinet".[91]

70. ***The IPC Decision does not err in referring to* O'Connor.** Repeating an argument that was rejected by both courts below,[92] the Applicant mischaracterizes the references to *O'Connor* in the IPC Decision, suggesting that the IPC imported a new test from *O'Connor*. That is not true. The

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[87] *IPC Decision*, at para. 103.
[88] *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, at para. 106 (emphasis added).
[89] *C.A. Decision*, at paras. 54-56.
[90] *IPC Decision*, at paras. 104-108, 133-134.
[91] *Div. Ct. Decision*, at para. 25 (underlining added; italics in original).
[92] *C.A. Decision*, at paras. 80-84; *Div. Ct. Decision*, at para. 36.

IPC cited some language from *O'Connor* with approval, but ultimately applied the same test the IPC has used for decades in cases involving the Opening Words Exemption.

71. ***The IPC Decision is consistent with the language in s. 12(1)(a).***[93] The Applicant's claim that the IPC Decision creates an inconsistency with s. 12(1)(a) is premised on the illustrative approach. (Again, the CO never argued that s. 12(1)(a) actually applies; the Applicant's position is that the Letters are exempt because they are broadly analogous to the records in s. 12(1)(a)). As the courts below recognized, on an expansive approach, there is no inconsistency.[94]

72. ***The IPC Decision did not establish a new or heightened test.*** The Applicant attacks the IPC Decision as adopting a "heightened test" for the Opening Words Exemption because the IPC occasionally cites a formulation of the test from PO-1725—*i.e.* whether accurate inferences could be drawn as to "actual deliberations occurring at a specific cabinet meeting". This is a remarkable change in position, considering that *the CO itself* relied on PO-1725 as the "authoritative" precedent before the IPC.[95] More fundamentally, as the Divisional Court concluded, the argument is without merit: the IPC "expressly recognized" that the PO-1725 formulation "was not the test",[96] and no aspect of the IPC Decision turned on requirements relating to "actual deliberations" at a "specific cabinet meeting". The IPC Decision was based on the lack of *any* evidence the Letters would disclose the substance of *any* deliberations at *any* Cabinet meeting.

73. The Applicant also mischaracterizes the IPC's reasons by claiming that he required evidence that the Letters were discussed by Cabinet "as a whole". The IPC made a *finding* that there was no evidence the Letters were discussed by Cabinet as a whole—together with a series of other findings about the Letters—but he never stated this to be the *test* or ultimate requirement that must be satisfied for the Opening Words Exemption.[97] As it has done repeatedly before the courts below, the Applicant is misconstruing findings made by the IPC as the legal test he applied.[98]

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[93] Section 12(1)(a) exempts "an agenda, minute or other record of the deliberations or decisions of the Executive Council or its committees".

[94] *C.A. Decision*, at para. 64; *Div. Ct. Decision*, at paras. 26-27.
[95] Sur-Reply Representations of Cabinet Office, at para. 36, AR, Tab 4C, p. 232.
[96] *Div. Ct. Decision*, at para. 47.
[97] *IPC Decision*, at paras. 113-114.
[98] *Div. Ct. Decision*, at para. 46.

G. THE PUBLIC INTEREST IN LEAVE BEING DENIED EXPEDITIOUSLY

74. CBC respectfully requests that this Court consider this application for leave to appeal and render its decision as expeditiously as possible, and in any event on or before May 26, 2022, which is one week before the next provincial election in Ontario (scheduled to be held on June 2, 2022).

75. As a condition of the IPC Stay Decision, the Applicant has confirmed that it does not oppose CBC's request for an expeditious determination of this leave application.[99] The Respondent IPC supports the CBC's request.

76. Denying leave after May 26, 2022 would significantly compromise the public interest in viewing the Letters, frustrate the purposes of the *Act*, and amount to a stark illustration of the principle that "access delayed is access denied".

77. The IPC Decision requiring that the Letters be made public—issued nearly three years ago—has been continuously stayed since the time it was made, as the Applicant sought to judicially review the decision, and then appeal the outcome of the judicial review. As a result, despite the IPC and two levels of court agreeing with the CBC that the Letters should be released for the public to see, they still remain shielded from public view nearly four years after they were issued.

78. Pursuant to the IPC Stay Decision, the Letters will be publicly released if and when this Court denies leave.[100] Otherwise, the stay will remain in place until the outcome of the appeal.

79. Thus, regardless of whether leave is granted or leave is denied after May 26, 2022, the practical impact is that the Letters will remain undisclosed until after the next provincial election on June 2, 2022. As the IPC Stay Decision recognizes, this squarely engages the concern that "access delayed is access denied". The lengthy review and appeal process "can frustrate the timely release of records and defeat what the Supreme Court of Canada has described as the overarching purpose of access to information legislation—to facilitate democracy."[101] This Court has explained that access to information legislation facilitates democracy in two 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."[102]

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[99] *IPC Stay Decision*, at p. 12.
[100] *IPC Stay Decision*, at p. 12.
[101] *IPC Stay Decision*, at p. 10.
[102] *Lavigne*, at para. 25, citing *Dagg*, at para. 61.

80. It is difficult to conceive of records more directly linked to these objectives than the Letters. They are one of the clearest means by which the electorate can hope to understand the government's priorities, and to "participate meaningfully in the democratic process" by holding governments to account for those priorities and any action or inaction towards achieving them.

81. The IPC Stay Decision recognized that "CBC has advanced persuasive arguments that the public interest objectives of the *Act* would be better served if it were possible for any leave application to be decided prior to the election… [D]isclosure of the mandate letters would provide the public with information about the government's policy priorities that would in turn 'facilitate democracy.'"[103] Conversely, if this Court denies leave *after* the next provincial election on June 2, 2022, then the public interest in viewing the Letters will be significantly compromised. Such a result would be a largely Pyrrhic victory that thwarts the transparency and accountability rationales underlying the *Act*'s access to information regime. It would undermine, rather than facilitate, democracy by depriving the public of the ability to review, understand, and meaningfully act upon records that the IPC and two levels of court have concluded they have the right to see.

82. Accordingly, CBC respectfully submits that this Court should consider (and deny) the application for leave as expeditiously as possible, and in any event on or before May 26, 2022.

PART IV - COSTS

83. The CBC submits that, if this application is dismissed, it should be awarded its costs in accordance with the tariff set out in Schedule B to the *Rules of the Supreme Court of Canada*.[104]

PART V - ORDER SOUGHT

84. The CBC respectfully requests that this application be dismissed as expeditiously as possible, and in any event on or before May 26, 2022, with costs to the CBC.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, THIS 8TH DAY OF APRIL, 2022

Justin Safayeni / Spencer Bass
Stockwoods LLP

[103] *IPC Stay Decision*, at p. 6.
[104] S.O.R. 2002-156.

PART VI - TABLE OF AUTHORITIES

CASES	Cited in paras.
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Prince Edward Island (Education and Lifelong Learning) (Re), 2019 CanLII 71190 (PEI IPC)	38, 53

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Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th Ed.	43

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