

Federal Court of Appeal



Cour d'appel fédérale

Date: 20200401

Docket: A-159-19

Citation: 2020 FCA 69

**CORAM: WEBB J.A.
RENNIE J.A.
MACTAVISH J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

and

DEMOCRACY WATCH

Respondent

Heard at Ottawa, Ontario, on December 12, 2019.

Judgment delivered at Ottawa, Ontario, on April 1, 2020.

REASONS FOR JUDGMENT BY:

RENNIE J.A.

CONCURRED IN BY:

**WEBB J.A.
MACTAVISH J.A.**

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REASONS FOR JUDGMENT

RENNIE J.A.

I. Introduction

[1] The Attorney General of Canada appeals from a judgment of the Federal Court (2019 FC 388, *per* Gleeson J.), in which the Court granted the respondent's judicial review application and set aside a decision of the Commissioner of Lobbying not to conduct an investigation under

subsection 10.4(1) of the *Lobbying Act*, R.S.C. 1985, c. 44 (4th Supp.). The Federal Court held that the Commissioner's decision that an investigation was not necessary to ensure compliance with the *Lobbying Act* or the Lobbyists' Code of Conduct was both subject to judicial review and unreasonable.

[2] For the reasons that follow, I would allow the appeal.

[3] The circumstances that gave rise to the application may be briefly stated. In January of 2017, the media reported that the Prime Minister of Canada, Justin Trudeau, and his family celebrated the New Year on a Caribbean island at the invitation of Prince Shah Karim Al Hussaini (the Aga Khan IV). The vacation was a gift.

[4] Following the media report, a private citizen filed a complaint with the Office of the Commissioner of Lobbying, asserting that the Aga Khan's gift had violated the *Lobbying Act* and the Lobbyists' Code. An acknowledgement letter was mailed to the complainant.

[5] The Office of the Lobbying Commissioner began an internal review to assess whether it should conduct an investigation. In a memorandum of September 13, 2017, the Director of Investigations recommended to the Commissioner that the file be closed without further investigation. In a short and somewhat cryptic memorandum, the Director found:

[...] no evidence to indicate that Prince Shah Karim Al Hussaini, Aga Khan IV, is remunerated for his work with the [Aga Khan Foundation Canada] and, therefore, that he was engaged in registrable lobbying activity during the Prime Minister's Christmas vacation.

Consequently, the *Lobbyists' Code of Conduct* does not apply to the Aga Khan's interactions with the Prime Minister.

[6] The Commissioner agreed. The reasons for the decision were not announced to the public, but the Commissioner informed the complainant of the decision not to investigate. I note, parenthetically, that the Aga Khan Foundation itself is a registered lobbyist under the *Lobbying Act*. The Aga Khan sits on the Board of the Aga Khan Foundation, but his position is unpaid. He is a volunteer.

[7] Democracy Watch commenced a judicial review application to set aside the decision not to pursue an investigation in respect of the complaint.

[8] After a review of the Commissioner's investigative powers and duties, the Federal Court concluded that the scheme set out by the *Lobbying Act* and the Lobbyists' Code imposed an obligation on the Commissioner to receive, consider and investigate complaints originating from the public. In reaching this conclusion, the Court relied in part on the introduction to the Lobbyists' Code, which states that "[a]nyone suspecting non-compliance with the Code should forward information to the Commissioner".

[9] The purpose of the *Lobbying Act* also played a role in the Federal Court's analysis. The judge concluded that the exhortation in the Code that the public provide information, combined with a "duty" on the part of the Lobbying Commissioner to review, consider and render a decision on information brought forward by the public furthered the important public purposes of the Act: to enhance public trust and confidence in the integrity of government decision-making. These factors led to a conclusion that legal rights were affected by a decision not to investigate

under subsection 10.4(1) of the *Lobbying Act*. The Commissioner's decision not to investigate further was therefore amenable to judicial review.

II. The Arguments before this Court

[10] The appellant makes two principle arguments.

[11] The first is that because the *Lobbying Act*, like the *Conflict of Interest Act*, S.C. 2006, c. 9, s. 2, fails to create a statutory right for a member of the public to have their complaint investigated, the Federal Court was bound by this Court's previous decision in *Democracy Watch v. Conflict of Interest and Ethics Commissioner*, 2009 FCA 15 (*Democracy Watch 2009*) and that it was an error of law for the Federal Court not to follow a binding authority.

[12] At issue in that appeal was whether the Conflict of Interest and Ethics Commissioner's decision not to begin an investigation under subsection 45(1) of the *Conflict of Interest Act*, when a member of the public had requested an investigation, was amenable to judicial review.

[13] This Court concluded that there was no statutory right under the *Conflict of Interest Act* for a member of the public to have their complaint investigated. The Ethics Commissioner, in turn, had no statutory duty to act upon that complaint (*Democracy Watch 2009* at para. 11). Because the *Conflict of Interest Act* did not create a right for a member of the public to have their complaint investigated, the Ethics Commissioner's decision not to investigate was not an order

or decision amenable to judicial review. The Court also noted that the Ethics Commissioner had not made any statements in her letter that could have binding legal effect (at para. 12).

[14] In this case, the Federal Court judge was not bound by *Democracy Watch 2009*. I agree with the respondent that while the scheme is analogous, there are differences between the two Acts. The language governing investigations in subsection 10.4(1) of the *Lobbying Act* is mandatory, while the language in subsection 45(1) of the *Conflict of Interest Act* is permissive. While this would seem, as a matter of first impression, to favour the respondent, this Court pointed out in *Democracy Watch v. Canada (Attorney General)*, 2018 FCA 194 at paragraph 29 that mandatory language does not necessarily translate into a reviewable order or decision amenable to judicial review.

[15] While *Democracy Watch 2009* is certainly instructive and contains guidance as to the criteria that the judge should consider in assessing whether the decision not to investigate gave rise to judicial review, it is not dispositive of the result in this case. The question whether the *Lobbying Act* creates rights or obligations, or causes prejudicial effects, can only be determined through consideration of the *Lobbying Act* itself, not another statute. It was not an error of law on the part of the judge to consider the argument whether a right of judicial review arose under the *Lobbying Act* on its own merits.

[16] I turn to the appellant's second argument.

[17] The appellant highlights the fact that the Lobbyists' Code, though it encourages the public to bring forward information, is not a statutory instrument that compels the investigation of complaints or creates legal rights. The appellant encourages this Court to distinguish between the process of gathering information provided for by the *Lobbying Act* and the Lobbyists' Code, and a statutory complaints process sufficiently robust to create rights. To this end, the appellant juxtaposes the lobbying regime with other statutes in which Parliament uses express language to create a statutory mechanism for the investigation of complaints by agents of Parliament.

[18] The respondent, in turn, highlights the legislative history of the *Lobbying Act*, emphasising the manner in which Parliament has, through a series of legislative reforms commencing in 1988, expanded the mandate and investigative powers of the Commissioner and lowered the threshold to commence an investigation. The respondent also emphasizes that the Lobbyists' Code encourages "anyone" to bring information to the attention of the Commissioner. Finally, the respondent argues that the loss of public trust that flows from the Commissioner's decision that the Aga Khan is not subject to the *Lobbying Act* or the Lobbyists' Code is a consequence sufficient to trigger a right of judicial review. According to the respondent, consequences need not be legal to trigger a right of review.

[19] As in all judicial review applications, the Court must first decide whether the decision sought to be set aside is subject to judicial review. Not all administrative action gives rise to a right of review. There are many circumstances where an administrative body's conduct will not trigger a right to judicial review. Some decisions are simply not justiciable, crossing the boundary from the legal to the political. Others may be justiciable but there may be an adequate

alternative remedy. No right of review arises where the conduct attacked fails to affect rights, impose legal obligations, or cause prejudicial effects (*Sganos v. Canada (Attorney General)*, 2018 FCA 84 at para. 6; *Air Canada v. Toronto Port Authority Et Al*, 2011 FCA 347, [2013] 3 F.C.R. 605 at para. 29; *Irving Shipbuilding Inc. v. Canada (Attorney General)*, 2009 FCA 116, [2010] 2 F.C.R. 488; and *Democracy Watch 2009*, referred to above).

[20] It is this latter criterion that is the focus of this appeal. The answer to the question whether the *Lobbying Act* affects rights, imposes obligations or causes prejudicial effects requires a careful examination of the legislation in question. As the issue is one of statutory interpretation, the standard of review is correctness (*TELUS Communications Inc. v. Wellman*, 2019 SCC 19 at para. 30).

III. The Legislative Regime

[21] The over-arching purpose of the *Lobbying Act* is to ensure transparency and accountability in the lobbying of public office holders and consequentially increase public confidence in the integrity of government decision-making. To that end, it establishes the Office of the Commissioner of Lobbying. The Commissioner reports directly to Parliament through the Speaker of the House of Commons and the Speaker of the Senate. The Commissioner's mandate includes the maintenance of a publically accessible system for the registration of paid lobbyists. The Act authorizes the Commissioner to craft policies which give guidance to lobbyists and public office holders about appropriate conduct.

[22] The Act recognizes two categories of lobbyists: in-house lobbyists and consultant lobbyists. Both are required to file returns with the Commissioner setting out various details relating to their activities. The legislative provisions are found in the appendix at the conclusion of these reasons.

[23] A consultant lobbyist is an individual who, on behalf of any person or organization, for payment, communicates with public office holders for enumerated purposes or arranges meetings between a public officer holder and any other individual.

[24] An individual is an in-house lobbyist where the individual is employed by a corporation or organization and their duties include communication with public office holders for enumerated purposes. The communication must constitute a significant part of the duties of an employee or would constitute a significant part of the duties of an employee if it was performed by only one employee (ss. 5(1) and 7(1)). The Act requires the Commissioner to promulgate the Lobbyists' Code, which provides guidance as to appropriate and inappropriate conduct. The Code applies to all persons required to register under the Act. While the Code is not a statutory instrument as defined by the *Statutory Instruments Act*, R.S.C. 1985, c. S-22, it imposes obligations on lobbyists, a breach of which can result in a report by the Commissioner to Parliament.

[25] The Act requires the Commissioner to conduct an investigation where the Commissioner has reason to believe that an investigation is necessary to ensure compliance with the Code or the

Act. Reports in respect of investigations are tabled in Parliament. Subsection 10.4(1) of the Act reads as follows:

Investigation

10.4 (1) The Commissioner shall conduct an investigation if he or she has reason to believe, including on the basis of information received from a member of the Senate or the House of Commons, that an investigation is necessary to ensure compliance with the Code or this Act, as applicable.

Enquêtes

10.4 (1) Le commissaire fait enquête lorsqu'il a des raisons de croire, notamment sur le fondement de renseignements qui lui ont été transmis par un parlementaire, qu'une enquête est nécessaire au contrôle d'application du code ou de la présente loi

[26] Subsection 10.4(1.1) gives the Commissioner a broad discretion to decide whether to investigate a complaint or to cease an investigation. The range of relevant considerations includes: whether the matter would be more appropriately dealt with under a procedure in another Act of Parliament; whether the matter is sufficiently important; and whether dealing with the matter would serve no useful purpose as too much time has passed. The Commissioner may also decide not to deal with a matter if “there is any other valid reason for not dealing with the matter.”

[27] At the conclusion of an investigation, the Commissioner must prepare a report that includes his or her findings, conclusions and the reasons for the conclusions reached and submit the report to the Speakers of the Senate and the House of Commons.

IV. Analysis

[28] It is apparent that the *Lobbying Act* does not create a right for a member of the public to have a complaint investigated. There is nothing in the language of the statute to suggest that the Commissioner must investigate the public's complaints. Parliament has established no process, procedures, mechanisms or obligations for disposing of complaints from the public.

[29] To the contrary, an investigation is required where the Commissioner has reason to believe, including on the basis of information received from a member of the Senate or the House of Commons, that an investigation is necessary to ensure compliance with the Lobbyists' Code or the *Lobbying Act*. The *Lobbying Act* does not specify that the Commissioner must take into account information received from the public. In fact, the *Lobbying Act* does not mention the public in the investigations section at all.

[30] A line in the introduction to the Lobbyists' Code which encourages the gathering of information is insufficient to create a decision which is subject to judicial review.

[31] Parliament placed an affirmative obligation on the Commissioner to investigate complaints that arise from Parliamentarians. As I outlined earlier, the Act describes in some detail the manner in which those investigations are to be carried out. It imposes a requirement for a decision and a reporting obligation. In contrast, the Act is silent with respect to information received from the public. There is no requirement to issue any decision, or to take any action, with respect to information arising from the public.

[32] As a general proposition, where Parliament intends to create a formal complaints procedure with a concomitant duty on an agent of Parliament to investigate, it does so expressly. There are many examples.

[33] The *Access to Information Act*, R.S.C. 1985, c. A-1 provides that the Information Commissioner "shall receive and investigate complaints" from persons specified in subsection 30(1) thereof.

[34] The *Privacy Act*, R.S.C. 1985, c. P-21 provides that the Privacy Commissioner "shall receive and investigate complaints" from persons listed in subsection 29(1). Section 30 requires that complaints be made "in writing". The Privacy Commissioner must report "the results of the investigation" to the complainant (s. 35(2)).

[35] The *Public Servants Disclosure Protection Act*, S.C. 2005, c. 46 provides that the Public Sector Integrity Commissioner (PSIC) has "duties" to "receive, review, investigate and otherwise deal with complaints made in respect of reprisals" (s. 22(i)). Under subsections 19.4(1), (2) and (3), the PSIC "must decide whether or not to deal with a complaint" within a specified time window, and provide written notice and reasons of a decision not to deal with a complaint to the complainant. A notice of refusal to investigate must also be provided to the complainant (s. 24(3)).

[36] The *Official Languages Act*, R.S.C. 1985, c. 31 (4th Supp.) provides that the Commissioner of Official Languages "shall investigate any complaint made [...] by any person or

group of persons [...]” (ss. 58(1) and (2)). These provisions allow complaints to be brought by anyone, regardless of whether their own statutory rights have been affected, consistent with the view that where Parliament intends to give the public at large the right to make a complaint, it usually does so expressly. The Commissioner of Official Languages' right to refuse to investigate or cease an investigation is also spelled out, as is the duty to notify the complainant and to "give the reasons therefor" where this occurs (ss. 58(4) and (5)).

[37] In contrast, the *Conflict of Interest Act* reserves to Parliamentarians the ability to "request" that the Conflict of Interest and Ethics Commissioner examine an alleged contravention of the Act (s. 44(1)). The Act provides that the Ethics Commissioner, in conducting an examination, "may consider information from the public that is brought to his or her attention by a member of the Senate or the House of Commons" (s. 44(4)). The Ethics Commissioner may also examine a matter on his or her own initiative (s. 45(1)). As this Court determined in *Democracy Watch 2009*, a decision not to investigate a public complaint under the *Conflict of Interest Act* did not give rise to a reviewable decision.

[38] In light of the language in these statutes, and in light of the fact that similar language is notably absent from the *Lobbying Act* and the Lobbyists' Code, I conclude that the lobbying regime does not establish a public complaints process. The solicitation of information from the general public, does not, in and of itself, create rights for those who provide information where they are not directly affected by the outcome.

[39] I understand the respondent's position that the *Lobbying Act* and Lobbyists' Code, interpreted differently, could accomplish their objectives in a more effective manner. This argument found favour with the Federal Court judge.

[40] It is not, however, the role of a court to ascribe an intention to Parliament where that intention is not clear. Neither the purpose of the *Lobbying Act*, nor the language in the introduction to the Lobbyists' Code, is sufficient to justify the reading in of a public complaints process and the concomitant right for members of the public to have the Lobbying Commissioner investigate their complaints.

[41] The Lobbying Commissioner's decision not to investigate a complaint brought by a member of the public is not a decision or order subject to judicial review. It is therefore not necessary to consider the reasonableness of the decision. I would allow the appeal, dismiss the application for judicial review, and restore the decision.

[42] The parties' submissions on costs before this Court are substantially the same as before the Federal Court. On costs, the Federal Court attached significant weight to the fact that Democracy Watch is a public interest organization that brought the application for judicial review in furtherance of that interest, and declined to exercise its discretion to order costs. I, too, would decline to exercise my discretion to order costs on appeal.

“Donald J. Rennie”

J.A.

“I agree
Wyman W. Webb J.A.”

“I agree
Anne L. Mactavish J.A.”

LEGISLATIVE APPENDIX

***Lobbying Act, R.S.C. 1985, c. 44
(4th Supp.)***

Consultant Lobbyists

Requirement to file return

5 (1) An individual shall file with the Commissioner, in the prescribed form and manner, a return setting out the information referred to in subsection (2), if the individual, for payment, on behalf of any person or organization (in this section referred to as the "client"), undertakes to

(a) communicate with a public office holder in respect of

(i) the development of any legislative proposal Government of Canada or by a member of the Senate or the House of Commons,

(ii) the introduction of any Bill or resolution in either House of Parliament or the passage, defeat or amendment of any Bill or resolution that is before either House of Parliament,

(iii) the making or amendment of any regulation as defined in subsection 2(1) of the Statutory Instruments Act,

(iv) the development or amendment of any policy or program of the Government of Canada,

(v) the awarding of any grant, contribution or other financial benefit by or on behalf of Her

***Loi sur le lobbying, S.R.C. 1985,
ch. 44 (4e suppl.)***

Lobbyistes-conseils

Déclaration obligatoire

5 (1) Est tenue de fournir au commissaire, en la forme réglementaire, une déclaration contenant les renseignements prévus au paragraphe (2) toute personne (ci-après « lobbyiste-conseil ») qui, moyennant paiement, s'engage, auprès d'un client, d'une personne physique ou morale ou d'une organisation :

a) à communiquer avec le titulaire d'une charge publique au sujet des mesures suivantes :

(i) l'élaboration de propositions législatives par le gouvernement fédéral ou par un sénateur ou un député,

(ii) le dépôt d'un projet de loi ou d'une résolution devant une chambre du Parlement, ou sa modification, son adoption ou son rejet par celle-ci,

(iii) la prise ou la modification de tout règlement au sens du paragraphe 2(1) de la Loi sur les textes réglementaires,

(iv) l'élaboration ou la modification d'orientation ou de programmes fédéraux,

(v) l'octroi de subventions, de contributions ou d'autres avantages financiers par Sa Majesté du chef du Canada ou en

Majesty in right of Canada, or

son nom,

(vi) the awarding of any contract by or on behalf of Her Majesty in right of Canada; or

(vi) l'octroi de tout contrat par Sa Majesté du chef du Canada ou en son nom;

(b) arrange a meeting between a public office holder and any other person.

b) à ménager pour un tiers une entrevue avec le titulaire d'une charge publique.

[...]

[...]

In-house Lobbyists (Corporations and Organizations)

Lobbyistes salariés (personnes morales ou organisations)

Requirement to file return

Déclaration obligatoire

7 (1) The officer responsible for filing returns for a corporation or organization shall file with the Commissioner, in the prescribed form and manner, a return setting out the information referred to in subsection (3) if

7 (1) Est tenu de fournir au commissaire, en la forme réglementaire, une déclaration contenant les renseignements prévus au paragraphe (3) le déclarant d'une personne morale ou d'une organisation si :

(a) the corporation or organization employs one or more individuals any part of whose duties is to communicate with public office holders on behalf of the employer or, if the employer is a corporation, on behalf of any subsidiary of the employer or any corporation of which the employer is a subsidiary, in respect of

a) d'une part, celle-ci compte au moins un employé dont les fonctions comportent la communication, au nom de l'employeur ou, si celui-ci est une personne morale, au nom d'une filiale de l'employeur ou d'une personne morale dont celui-ci est une filiale, avec le titulaire d'une charge publique, au sujet des mesures suivantes :

(i) the development of any legislative proposal by the Government of Canada or by a member of the Senate or the House of Commons,

(i) l'élaboration de propositions législatives par le gouvernement fédéral ou par un sénateur ou un député,

(ii) the introduction of any Bill or resolution in either House of Parliament or the passage, defeat or amendment of any Bill or resolution that is before

(ii) le dépôt d'un projet de loi ou d'une résolution devant une chambre du Parlement, ou sa modification, son adoption ou son rejet par celle-ci,

(iii) la prise ou la modification de

either House of Parliament,

(iii) the making or amendment of any regulation as defined in subsection) of the Statutory Instruments Act,

(iv) the development or amendment of any policy or program of the Government of Canada, or

(v) the awarding of any grant, contribution or other financial benefit by or on behalf of Her Majesty in right of Canada; and

(b) those duties constitute a significant part of the duties of one employee or would constitute a significant part of the duties of one employee if they were performed by only one employee.

[...]

Investigation

10.4 (1) The Commissioner shall conduct an investigation if he or she has reason to believe, including on the basis of information received from a member of the Senate or the House of Commons, that an investigation is necessary to ensure compliance with the Code or this Act, as applicable.

Exception

(1.1) The Commissioner may refuse to conduct or may cease an investigation with respect to any matter if he or she is of the opinion that

tout règlement au sens du paragraphe 2(1) de la Loi sur les textes réglementaires,

(iv) l'élaboration ou la modification d'orientation ou de programmes fédéraux,

(v) l'octroi de subventions, de contributions ou d'autres avantages financiers par Sa Majesté du chef du Canada ou en son nom;

b) d'autre part, les fonctions visées à l'alinéa a) constituent une partie importante de celles d'un seul employé ou constitueraient une partie importante des fonctions d'un employé si elles étaient exercées par un seul employé.

[...]

Enquête

10.4 (1) Le commissaire fait enquête lorsqu'il a des raisons de croire, notamment sur le fondement de renseignements qui lui ont été transmis par un parlementaire, qu'une enquête est nécessaire au contrôle d'application du code ou de la présente loi.

Refus d'intervenir

(1.1) Le commissaire peut refuser d'enquêter ou de poursuivre une enquête s'il estime, selon le cas :

a) que l'affaire visée pourrait avantageusement être traitée en conformité avec la procédure prévue

(a) the matter is one that could more appropriately be dealt with according to a procedure provided for under another Act of Parliament;

(b) the matter is not sufficiently important;

(c) dealing with the matter would serve no useful purpose because of the length of time that has elapsed since the matter arose; or

(d) there is any other valid reason for not dealing with the matter.

Conflict of Interest Act, S.C.
2006, c. 9, s. 2

Request from parliamentarian

44 (1) A member of the Senate or House of Commons who has reasonable grounds to believe that a public office holder or former public office holder has contravened this Act may, in writing, request that the Commissioner examine the matter.

Content of request

(2) The request shall identify the provisions of this Act alleged to have been contravened and set out the reasonable grounds for the belief that the contravention has occurred.

Examination

(3) If the Commissioner determines that the request is frivolous or vexatious or is made in bad faith, he or she may decline to examine the matter. Otherwise,

par une autre loi fédérale;

b) que les conséquences de cette affaire ne sont pas suffisamment importantes;

c) que cela serait inutile en raison de la période écoulée depuis le moment où l'affaire a pris naissance;

d) que cela est opportun pour tout autre motif justifié.

Loi sur les conflits d'intérêts, L.C.
2006, ch. 9, art. 2

Demande émanant d'un parlementaire

44 (1) Tout parlementaire qui a des motifs raisonnables de croire qu'un titulaire ou ex-titulaire de charge publique a contrevenu à la présente loi peut demander par écrit au commissaire d'étudier la question.

Contenu

(2) La demande énonce les dispositions de la présente loi qui auraient été enfreintes et les motifs raisonnables sur lesquels elle est fondée.

Étude

(3) S'il juge la demande futile, vexatoire ou entachée de mauvaise foi, le commissaire peut refuser d'examiner la question. Sinon, il est tenu de procéder à l'étude de la question qu'elle soulève et peut, compte tenu des circonstances,

he or she shall examine the matter described in the request and, having regard to all the circumstances of the case, may discontinue the examination.

Information from public

(4) In conducting an examination, the Commissioner may consider information from the public that is brought to his or her attention by a member of the Senate or House of Commons indicating that a public office holder or former public office holder has contravened this Act. The member shall identify the alleged contravention and set out the reasonable grounds for believing a contravention has occurred.

[...]

Examination on own initiative

45 (1) If the Commissioner has reason to believe that a public office holder or former public office holder has contravened this Act, the Commissioner may examine the matter on his or her own initiative.

[...]

Orders and decisions final

66 Every order and decision of the Commissioner is final and shall not be questioned or reviewed in any court, except in accordance with the Federal Courts Act on the grounds referred to in paragraph 18.1(4)(a), (b) or (e) of that Act.

mettre fin à l'étude

Renseignements provenant du public

(4) Dans le cadre de l'étude, le commissaire peut tenir compte des renseignements provenant du public qui lui sont communiqués par tout parlementaire et qui portent à croire que l'intéressé a contrevenu à la présente loi. Le parlementaire doit préciser la contravention présumée ainsi que les motifs raisonnables qui le portent à croire qu'une contravention a été commise.

[...]

Étude de son propre chef

45 (1) Le commissaire peut étudier la question de son propre chef s'il a des motifs de croire qu'un titulaire ou ex-titulaire de charge publique a contrevenu à la présente loi.

[...]

Ordonnances et décisions définitives

66 Les ordonnances et décisions du commissaire sont définitives et ne peuvent être attaquées que conformément à la Loi sur les Cours fédérales pour les motifs énoncés aux alinéas 18.1(4)a), b) ou e) de cette loi

***Access to Information Act, R.S.C.
1985, c. A-1***

**Receipt and investigation of
complaints**

30 (1) Subject to this Part, the Information Commissioner shall receive and investigate complaints

- (a) from persons who have been refused access to a record requested under this Part or a part thereof;
- (b) from persons who have been required to pay an amount under section 11 that they consider unreasonable;
- (c) from persons who have requested access to records in respect of which time limits have been extended pursuant to section 9 where they consider the extension unreasonable;
- (d) from persons who have not been given access to a record or a part thereof in the official language requested by the person under subsection 12(2), or have not been given access in that language within a period of time that they consider appropriate;
- (d.1) from persons who have not been given access to a record or a part thereof in an alternative format pursuant to a request made under subsection 12(3), or have not been given such access within a period of time that they consider appropriate;
- (e) in respect of any publication or bulletin referred to in section 5; or

***Loi sur l'accès à l'information,
L.R.C. (1985), ch. A-1***

Réception des plaintes et enquêtes

30 (1) Sous réserve des autres dispositions de la présente partie, le Commissaire à l'information reçoit les plaintes et fait enquête sur les plaintes :

- a) déposées par des personnes qui se sont vu refuser la communication totale ou partielle d'un document qu'elles ont demandé en vertu de la présente partie;
- b) déposées par des personnes qui considèrent comme excessif le montant réclamé en vertu de l'article 11;
- c) déposées par des personnes qui ont demandé des documents dont les délais de communication ont été prorogés en vertu de l'article 9 et qui considèrent la prorogation comme abusive;
- d) déposées par des personnes qui se sont vu refuser la traduction visée au paragraphe 12(2) ou qui considèrent comme contre-indiqué le délai de communication relatif à la traduction;
- d.1) déposées par des personnes qui se sont vu refuser la communication des documents ou des parties en cause sur un support de substitution au titre du paragraphe 12(3) ou qui considèrent comme contre-indiqué le délai de communication relatif au transfert;
- e) portant sur le répertoire ou le bulletin visés à l'article 5;

(f) in respect of any other matter relating to requesting or obtaining access to records under this Part.

Public Servants Disclosure Protection Act, S.C. 2005, c. 46

Complaints

19.1 (1) A public servant or a former public servant who has reasonable grounds for believing that a reprisal has been taken against him or her may file with the Commissioner a complaint in a form acceptable to the Commissioner. The complaint may also be filed by a person designated by the public servant or former public servant for the purpose.

[...]

Duties

22 The duties of the Commissioner under this Act are to

[...]

(i) receive, review, investigate and otherwise deal with complaints made in respect of reprisals.

Official Languages Act, R.S.C. 1985, c. 31 (4th Suppl.)

Investigation of complaints

58 (1) Subject to this Act, the Commissioner shall investigate any complaint made to the Commissioner arising from any act

f) portant sur toute autre question relative à la demande ou à l'obtention de documents en vertu de la présente partie.

Loi sur la protection des fonctionnaires divulgateurs d'actes répréhensibles, L.C. 2005, ch. 46

Plaintes

19.1 (1) Le fonctionnaire ou l'ancien fonctionnaire qui a des motifs raisonnables de croire qu'il a été victime de représailles peut déposer une plainte auprès du commissaire en une forme acceptable pour ce dernier; la plainte peut également être déposée par la personne qu'il désigne à cette fin.

[...]

Attributions

22 Le commissaire exerce aux termes de la présente loi les attributions suivantes :

[...]

i) recevoir et examiner les plaintes à l'égard des représailles, enquêter sur celles-ci et y donner suite.

Loi sur les langues officielles, S.R.C. 1985, ch. 31 (4^e suppl.)

Plaintes

58 (1) Sous réserve des autres dispositions de la présente loi, le commissaire instruit toute plainte reçue — sur un acte ou une

or omission to the effect that, in any particular instance or case,

(a) the status of an official language was not or is not being recognized,

(b) any provision of any Act of Parliament or regulation relating to the status or use of the official languages was not or is not being complied with, or

(c) the spirit and intent of this Act was not or is not being complied with

in the administration of the affairs of any federal institution.

Privacy Act, R.S.C. 1985, c. P-21

Receipt and investigation of complaints

29 (1) Subject to this Act, the Privacy Commissioner shall receive and investigate complaints

(a) from individuals who allege that personal information about themselves held by a government institution has been used or disclosed otherwise than in accordance with section 7 or 8;

(b) from individuals who have been refused access to personal information requested under subsection 12(1);

(c) from individuals who allege that they are not being accorded the rights to which they are entitled under subsection 12(2) or that

omission — et faisant état, dans l'administration d'une institution fédérale, d'un cas précis de non-reconnaissance du statut d'une langue officielle, de manquement à une loi ou un règlement fédéraux sur le statut ou l'usage des deux langues officielles ou encore à l'esprit de la présente loi et à l'intention du législateur.

Loi sur la protection des renseignements personnels, L.R.C. (1985), ch. P-21

Réception des plaintes et enquêtes

29 (1) Sous réserve des autres dispositions de la présente loi, le Commissaire à la protection de la vie privée reçoit les plaintes et fait enquête sur les plaintes :

a) déposées par des individus qui prétendent que des renseignements personnels les concernant et détenus par une institution fédérale ont été utilisés ou communiqués contrairement aux articles 7 ou 8;

b) déposées par des individus qui se sont vu refuser la communication de renseignements personnels, demandés en vertu du paragraphe 12(1);

c) déposées par des individus qui se prétendent lésés des droits que leur

corrections of personal information requested under paragraph 12(2)(a) are being refused without justification;

(d) from individuals who have requested access to personal information in respect of which a time limit has been extended pursuant to section 15 where they consider the extension unreasonable;

(e) from individuals who have not been given access to personal information in the official language requested by the individuals under subsection 17(2);

(e.1) from individuals who have not been given access to personal information in an alternative format pursuant to a request made under subsection 17(3);

(f) from individuals who have been required to pay a fee that they consider inappropriate;

(g) in respect of the index referred to in subsection 11(1); or

(h) in respect of any other matter relating to

(i) the collection, retention or disposal of personal information by a government institution,

(ii) the use or disclosure of personal information under the control of a government institution, or

(iii) requesting or obtaining access

accorde le paragraphe 12(2) ou qui considèrent comme non fondé le refus d'effectuer les corrections demandées en vertu de l'alinéa 12(2)a);

d) déposées par des individus qui ont demandé des renseignements personnels dont les délais de communication ont été prorogés en vertu de l'article 15 et qui considèrent la prorogation comme abusive;

e) déposées par des individus qui n'ont pas reçu communication de renseignements personnels dans la langue officielle qu'ils ont demandée en vertu du paragraphe 17(2);

e.1) déposées par des individus qui n'ont pas reçu communication des renseignements personnels sur un support de substitution en application du paragraphe 17(3);

f) déposées par des individus qui considèrent comme contre-indiqué le versement exigé en vertu des règlements;

g) portant sur le répertoire visé au paragraphe 11(1);

h) portant sur toute autre question relative à :

(i) la collecte, la conservation ou le retrait par une institution fédérale des renseignements personnels,

(ii) l'usage ou la communication des renseignements personnels qui relèvent d'une institution fédérale,

(iii) la demande ou l'obtention de renseignements personnels en vertu du paragraphe 12(1).

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**APPEAL FROM A JUDGMENT OF THE FEDERAL COURT OF CANADA DATED
MARCH 29, 2019, CITATION NUMBER 2019 FC 388
(DOCKET NUMBER T-115-18)**

DOCKET: A-159-19

STYLE OF CAUSE: ATTORNEY GENERAL OF
CANADA v. DEMOCRACY
WATCH

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: DECEMBER 12, 2019

REASONS FOR JUDGMENT BY: RENNIE J.A.

CONCURRED IN BY: WEBB J.A.
MACTAVISH J.A.

DATED: APRIL 1, 2020

APPEARANCES:

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