Court File No.: 37276

IN THE SUPREME COURT OF CANADA
(On appeal from the Federal Court of Appeal)

BETWEEN:

DELTA AIRLINES INC.

APPELLANT

- AND -

DR. GABOUR LUKÀCS

RESPONDENT

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PART I – OVERVIEW

1. The Attorney General for Ontario ("Ontario") was granted leave to intervene in this appeal on July 19, 2017. Ontario intervenes to make submissions regarding 1) whether a statutory tribunal has the discretion to screen out complaints because a complainant lacks standing; and 2) whether the public interest standing test should be applied in the administrative law context. Ontario takes no position regarding whether the Canadian Transportation Agency in particular has the authority to decline to hear complaints solely on the basis of a lack of standing, whether s. 67.2(1) of the *Canada Transportation Act* applies to the respondent's complaint or whether the respondent meets the test for public interest standing (if public interest standing is extended to the administrative law context).

PART II – INTERVENER'S POSITION ON THE QUESTIONS IN ISSUE

2. Ontario submits that:

a. Where a tribunal has been imparted with discretion regarding how it will deal with public complaints, deference should be paid to the tribunal's choice of procedures and screening decisions. However, as the ability to make a complaint to a tribunal raises access to justice issues, that deference must be balanced with the ability of members of the public to access public complaint procedures in a meaningful way. An assessment of whether a complaint should be "screened in" by a tribunal should involve consideration of the tribunal's statutory mandate, institutional constraints, the context in which the tribunal operates and the interests raised by the complaint. The focus of the inquiry should be on the substance of the complaint and not the identity of the complainant.

b. There are strong policy reasons why the public interest standing test should not be extended to apply to public complaints to administrative tribunals. The public interest standing test was developed to ensure that the constitutionality and legality of state action did not go unchallenged. These types of issues are rarely raised by a public complaint in the administrative law context. Further, public complaints raise a myriad of issues and engage interests that may have no relation to government action. Finally, it is not necessary to apply the public interest standing test to administrative tribunals because existing screening mechanisms enable a tribunal to direct its resources away from meritless complaints.

PART III – STATEMENT OF ARGUMENT

1. Flexibility in "screening out" complaints must be balanced with access to justice considerations

3. Because administrative tribunals are creatures of statute, the basis on which a tribunal charged with hearing complaints from members of the public may decline to deal with a complaint depends on the tribunal's enabling statute and the context in which the tribunal operates.[1]

4. And while creatures of statute, tribunals are also the "masters of their own procedures", particularly where the tribunal's enabling statute imparts the decision-maker with the discretion to choose those procedures. While not determinative, important weight and deference must be given to the choice of procedures made by the agency itself, including its determination as to how it will handle complaints from members of the public. The institutional constraints of the tribunal and the context in which a tribunal operates should be factors applied to the determination of the process for handling public complaints.[2]

5. Deference to a tribunal's choice of procedure is particularly important when applied to a regulatory tribunal whose authority extends beyond the review of public complaints to the authority to make policy choices as to how to govern a particular industry. Such an agency may have particular policy reasons for declining to deal with, or choosing to deal with, a particular complaint which accord with the tribunal or agency's legislative mandate or policy objectives and priorities.[3] For example, a tribunal may decide that a particular complaint reveals a wider, systemic issue that may warrant regulation and may determine that complaints regarding that issue should receive priority over complaints that relate to an isolated incident that would not warrant a regulatory response.

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[1] *Nolan et al v.Kerry (Canada) Inc. et al* [2009] 2 S.C.R. 678 at 33 and *Bell v. Canada (Canadian Human Rights Commission)* [1996] 3 S.C.R. 854 at 54-55

[2] *Danyluk v. Ainsworth Technologies Inc*. [2001] 2 S.C.R. 460 at para. 47*; Baker v. Canada (Minister of Citizenship and Immigration)* [1999] 2 S.C.R. 817, at para. 27, *IWA v. Consolidated-Bathurst Packaging Ltd*., [1990] 1 S.C.R. 282, per Gonthier J. at para. 69

[3] *Baker v. Canada (Minister of Citizenship and Immigration)* (1999), [1999] 2 S.C.R. 817, [1999] S.C.J. No. 39 at paragraph 27 and *IWA v. Consolidated-Bathurst Packaging Ltd.*, [1990] 1 S.C.R. 282, per Gonthier J. at para. 69

6. Consideration of the context in which a tribunal operates and the purpose of its authority to receive public complaints is also an important factor in determining the process by which complaints will be handled. Tribunals consider complaints in a wide variety of regulatory contexts ranging from policing to land surveying and the interests at stake may be more marked in one context than another. Different types of complainants may be afforded different levels of procedural fairness. For example, in Ontario, it has been held that where a complaint could result in the professional discipline of the individual who is the subject of the complaint, the complainant is owed a lower duty of procedural fairness than the individual who is the subject of a complaint.[4]

7. Consequently, it is Ontario's position that the evaluation of a tribunal's "screening" procedure for public complaints must include an examination of the tribunal's statutory authority and mandate, the context in which the tribunal operates and the importance of the interests at stake in the complaints regime. Where the authority of a regulatory tribunal to receive and deal with public complaints is permissive, i.e. the legislation contains the word "may" rather than "shall", the tribunal has been given the statutory authority to perform a gatekeeping function and has been granted the discretion to screen the complaints that it receives to ensure, among other things, the best use of its finite resources and the discretion to set its own priorities in the pursuit of its statutory mandate.[5] As a result, deference to the tribunal's screening decisions should be afforded by the Courts.

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[4] *Silverthorne v. Ontario College of Social Workers* [2006] O.J. No. 207 (Div. Crt.) at para. 14-15 and 17, *Walker v. Health Professions Appeal and Review Board* [2008] O.J. No. 661, at para. 14-16. In Ontario, it has also been held that, generally, the level of procedural fairness owed at the "screening" stage of a complaint is on the lower end of the spectrum with respect to both the complainant and the individual who is the subject of the complaint. See *Endicott vs. The Office of the Independent Police Review Director* 2014 ONCA 363, *Wall v. Ontario (Independent Police Review Director)* [2013] O.J. No. 2624, at para. 42

[5] *Delta Airlines Inc. v. Lukacs* [2016] F.C.J. No. 971, at para. 16. Such legislation is to be contrasted with legislation which actually sets out specific screening criteria to be applied by the tribunal. See for example *Early Childhood Educators Act, 2007* S.O. 2007, c.7 Schedule 8, s. 31(2); *Excellent Care for All*

8. However, Ontario also recognizes that the ability of a member of the public to make a complaint to an administrative tribunal raises important access to justice issues. First, tribunals that receive public complaints often deal with issues which engage the protection of the public and civil rights. For example, in Ontario, the *Police Services Act* provides the Independent Police Review Director with the mandate to receive and investigate complaints about the policy or service of a police force or the conduct of a police officer.[6] The *Regulated Health Professionals Act* permits the College of a particular health profession to receive complaints about the competency and conduct of those health professionals.[7] The *Early Childhood Educators Act, 2007* permits complaints about the competence and conduct of early childhood educators.[8] Some statutes are silent on the right of a member of the public to file a complaint but, nonetheless, a regulator may choose to receive and investigate complaints.

9. Second, tribunals may provide members of the public with access to justice that they might otherwise be denied, due to a lack of financial or other resources, if their only manner of recourse is resort to the Superior Courts through a civil action.

10. Further in certain contexts, the ability to make a complaint and to have that complaint reviewed by a tribunal has been found to engage a legal "right". In *Endicott vs. The Office of the Independent Police Review Director*, the Ontario Court of Appeal determined that the use of the words "shall review" in section 59 of the *Police Services Act*[9] imparted a legal right on the complainant to have their complaint reviewed and dealt with pursuant to the Act, subject to the ability of the Director to screen out the complaint based on the enumerated criteria set out in section 60 of the Act. The Court found:

Act, S.O. 2010 c. 14, s. 13.2(2); *French Language Services Act*, R.S.O. 1990, c. F.32, s. 12.3(1); *Justices of the Peace Act* R.S.O. 1990, c. J.4, s. 11(19); *Ontario College of Teachers Act*, 1996 S.O. 1996, c. 12, s. 26(2); *Coroners Act* R.S.O. 1990, c. C.37, s. 8.4(10)

[6] *Police Services Act* R.S.O. 1990 c. P. 15, ss. 59 and 60 and see *Endicott v. Ontario (Independent Police Review Office)* 2014 ONCA 363

[7] *Regulated Health Professions Act*, 1991, S.O. 1991, c. 18, s. 25

[8] *Early Childhood Educators Act*, 2007 S.O. 2007, c. 7 Schedule 8, s. 31(1)

[9] R.S.O. 1990 c. P.15

> The use of "shall" in these provisions, as a matter of both grammatical and ordinary sense and of established legislative usage, imposes statutory obligations on the Director, upon receipt of a complaint from a member of the public, to pursue the complaint. [10]

11. Consequently, when a tribunal is assessing a complaint to determine whether it will be screened in, it is important that the tribunal look not only at its enabling statute to examine whether it has the discretion to refuse to adjudicate a complaint and, if so, the extent of that discretion, but also whether its screening decision accords with the public interests the tribunal is established to serve.[11] It is Ontario's position that this assessment should include a review of the substance of the complaint to determine how it may or may not accord with the legislative mandate or policy objectives of the tribunal. A review of a complaint based only upon the identity of the complainant does not enable a tribunal to assess the complaint in the context of its unique statute and legislative mandate.

12. Some Ontario statutes authorize or require a tribunal to screen out a complaint because the complainant was not "directly affected" by the conduct at issue or does not have a "sufficient personal interest" in the subject matter of the complaint.[12] However, it is Ontario's position that where the statute is silent in that respect, the focus of the determination of whether a complaint should be screened out should be on the substance of the complaint itself rather than on the standing of the complainant because of the requirement that tribunals regulate and act in the public interest, and also because of the access to justice issues arising in the context of public complaints to administrative tribunals. There may be instances in which a tribunal may determine that it cannot effectively investigate or adjudicate a complaint because it has not been brought by someone who is directly affected by the subject matter of the complaint. However, that assessment should be based on the substance of the complaint and not on the identity of the complainant.

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[10] *Endicott vs. The Office of the Independent Police Review Director* 2014 ONCA 363, at para 27, see also paras. 24-36. See also *Englander v. TELUS Communications Inc.* [2005] 2 F.C.R. 572 (F.C.A.) at paras. 49-52 and 90

[11] *Endicott vs. The Office of the Independent Police Review Director* 2014 ONCA 363

[12] See for example: *Coroners Act* R.S.O. 1990, c. C.37, s. 8.4 (10)(c); *Provincial Advocate for Children and Youth Act*, 2007, S.O. 2007, c. 9, s. 16. (4.1) 2.; *Ombudsman Act* R.S.O. 1990, c. O.6, s. 17(2)(c); *Personal Health Information Protection Act*, 2004, S.O. 2004, c. 3, Sched. A, s. 57(4)(d); *Police Services Act* R.S.O. 1900 c. P. 15, s. 60(5)

13. For all of the above reasons, it is Ontario's position that, for tribunals with the authority to receive, investigate and/or adjudicate complaints from members of the public, a balance must be struck between a tribunal's discretion to screen out complaints and the ability of the public to access justice by having their complaints reviewed and investigated. This balance will best be struck if a tribunal evaluates the subject matter of the complaint against its unique statutory mandate and context, rather than limiting its evaluation of the complaint to the source of the complaint.

2. The public interest standing test should not be applied in the administrative law context to screen out complaints from members of the public

14. In *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, this Honourable Court held that the public interest standing test, which had been developed in previous jurisprudence, recognized that there are occasions when public interest litigation is an appropriate vehicle to bring matters of public interest and importance before the courts, and that the test recognized the important role of the courts in assessing the legality of government action.[13]

15. "[C]entral to the development of public interest standing in Canada" was the principle of legality, which has two aspects: that state action should conform to the Constitution and statutory authority and that there must be practical and effective ways to challenge the legality of state action.[14]

16. Further, it is a premise of the Court's discretionary approach to public interest standing that the proceedings raise a justiciable question, that is, a question that is appropriate for judicial

[13] *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society* [2012] 2 S.C.R. 524, at paras. 22 and 23
[14] *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society* [2012] 2 S.C.R. 524, at paras. 31 and 32

determination. The Court must determine whether the nature of the issue is such that the Court has the institutional capacity to address it.[15]

17. In other words, the public interest standing test was developed as means of ensuring that unconstitutional legislation or illegal government action did not go unchallenged simply because an individual who was directly affected did not bring a court challenge.[16] In this way, the public interest standing test has been used as a "sword" to allow individuals with a genuine public interest access to the courts where they previously would not have had access.

18. However, it is Ontario's position that there are strong policy reasons why the law of public interest standing should not be applied as a "shield" in the administrative law context to prevent a complainant from accessing a public complaints procedure.

19. It is Ontario's position that to allow members of the public to make complaints to a tribunal only where they meet a public interest standing test developed in the context of civil litigation is antithetical to the statutory purposes of some adjudicative tribunals which are intended to provide members of the public with easier and faster access to justice, before tribunal members with specific expertise regarding the statutory scheme at issue, than can be provided by overburdened Courts.[17]

20. Further, complaints to administrative tribunals by members of the public rarely involve challenges to the constitutionality of legislation or the legality of state action as contemplated in this Court's public interest standing cases. Complaints to a tribunal by members of the public may not raise a "justiciable" issue as it is traditionally contemplated in the public interest standing cases. Instead, these complaints may challenge a myriad of activity and actors: i.e.

Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society [2012] 2 S.C.R. 524; Finlay, at p. 632; Canada (Auditor General) v. Canada (Minister of Energy, Mines and Resources), [1989] 2 S.C.R. 49, at pp. 90-91;

[16] *Finlay v. Canada (Minister of Finance)* [1986] 2 S.C.R. 607*; Canadian Council of Churches v. Canada (Minister of Employment and Immigration)* [1992] 1 S.C.R. 236; *Borowski v. Canada (Attorney General),* [1981] 2 S.C.R 575; and *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society* [2012] 2 S.C.R. 524

[17] *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd*. [2016] S.C.J. No. 47 at para. 22 and *Lukacs v. Canada (Canadian Transportation Agency)* [2016] F.C.J. No. 971, at paras. 19-22

commercial activity; regulated professionals (i.e. doctors, lawyers, engineers), and private parties. Consequently, the purpose for which the public interest standing test was created is not generally engaged in the administrative law context. Most tribunals which also act as regulators have the authority to take action to address a particular issue whether or not a complaint is received.

21. It is also Ontario's position that it is not necessary to apply the public interest standing test in order to ensure that tribunals are able to use their finite resources effectively. The screening criteria already enumerated in legislation[18] and in the common law[19] and the recognized flexibility in the procedures of administrative tribunals address the issue of the efficient use of tribunal resources. Ontario submits that the added screening tool of the application of the public interest standing test is not warranted.[20]

22. While the public interest standing test has been found to be an effective means of curtailing a multiplicity of suits and litigation by "busybodies", this Honourable Court has also recognized that concerns in this regard may be overstated:

> Few people, after all, bring cases to court in which they have no interest and which serve no proper purpose. As Professor K. E. Scott once put it, "[t]he idle and whimsical plaintiff, a dilettante who litigates for a lark, is a specter which haunts the legal literature,

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[18] For example, in Ontario the enabling statutes of many tribunals impart those tribunals with the discretion to screen out complaints on the basis that the complaint is trivial, frivolous, vexatious, made in bad faith, an abuse of process, or moot; that the matter should be more appropriately dealt with under another act or law; that the complaint is not within the jurisdiction of the tribunal; or that the complaint is out of time and the delay was not incurred in good faith. See for example, the *Agricultural Employees Protection Act 2002*, S.O. 2002, s. 13(1); *Architects Act* R.S.O. 1990, c. A. 26, s. 32(5); *Courts of Justice Act*, R.S.O. 1990, c. C. 43 s. 33.1; *Private Security and Investigative Services Act 2005*, S. O. 2005, c. C 34, s. 19(1); *Professional Engineers Act* R.S.O. 1990 c. P 28, s. 26(5); the Regulated Health Professions Act 1991, S.O. 1991, c. 18, s. 25; and the *Statutory Powers Procedure Act* R.S.O. 1990. c. S. 22, s. 4.6.

[19] *Lukacs v. Canada (Transportation Agency)* 2016 FCA 202, at paras. 31-32 *and* *Lukacs v. Canada (Canadian Transportation Agency)* [2016] F.C.J. No. 971

[20] *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society* [2012] 2 S.C.R. 524, at para. 64

not the courtroom": "Standing in the Supreme Court -- A Functional Analysis" (1973), 86 Harv. L. Rev. 645, at p. 674.[21]

23. This Honourable Court has determined that there may be better or more appropriate alternatives to "the blunt instrument of a denial of standing" to guard against litigation by the mere busybody, such as screening claims for merit at an early stage, intervening to prevent abuses of process and awarding costs.[22] In the administrative law context, the application of already recognized screening criteria would achieve the same goal and would protect against the prospect that tribunals are allocating their finite resources to the investigation of meritless complaints.

24. Provided that statutory bodies act within their legislative authority, are mindful of the interests that their legislative mandate is designed to serve, and act reasonably and fairly, they should be permitted sufficient flexibility to screen complaints so as to set their own priorities to accomplish their statutory mandate within their resources. The law of public interest standing which was designed to moderate access to the Courts, not to administrative tribunals, may not provide sufficient flexibility to a tribunal. The enabling legislation of administrative tribunals may authorize a broad range of participants depending on the purpose of the legislative scheme – that scheme should not be coloured by a test designed for another purpose and specifically for Superior Courts.

25. Further, given the significant differences between the purposes and functions of Courts and those of administrative tribunals, which are part of the Executive Branch of government, where it is unnecessary to do so tribunals should not resort to the application of principles developed with respect to Court processes. Generally, administrative tribunals that receive public complaints do not deal with the broad public interest or constitutional litigation that the public interest standing test was designed to facilitate because, unlike Superior Courts, they do

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[21] *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society* [2012] 2 S.C.R. 524, at para. 28

[22] *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society* [2012] 2 S.C.R. 524, at para. 28 and Thorson v. Attorney General of Canada, [1975] 1 S.C.R. 138, at p. 145.

not have the jurisdiction to grant a declaration of invalidity and are limited to refusing to apply a legislative provision that the tribunal considers to be unconstitutional.[23]

3. Conclusion

26. It is Ontario's position that tribunals which have the discretion whether or not to deal with a complaint should maintain a broad discretion to screen out complaints based on their own regulatory regime and context, but the focus of that screening decision should be on the complaint, not the complainant. This strikes the appropriate balance between access to justice and the effective use of the limited resources of administrative tribunals.[24] The public interest standing test is too blunt a tool to regulate access to a public complaint procedure and is ill-suited to the purposes and flexible procedures of administrative tribunals. Existing mechanisms can deal with the issue of the diversion of a tribunal's finite resources away from the investigation of meritorious complaints.

PART IV - COSTS

27. On July 19, 2017, this Honourable Court ordered that the interveners shall pay to the appellant and respondent any additional disbursements occasioned by their interventions. Ontario requests that no additional costs be awarded against it and does not seek any costs.

PART V - REQUEST FOR ORAL ARGUMENT

28. On July 19, 2017, Ontario was granted leave to make oral argument not exceeding five minutes.

August 23, 2017

Heather Mackay and Edmund Huang

Counsel for the Intervener,
The Attorney General for Ontario

[23] *Nova Scotia (Workers' Compensation Board) v. Martin*; [2003] 2 S.C.R. 504, at para. 31 and *Mouvement laïque québécois v. Saguenay (City)* [2015] S.C.J. No. 16**,** at para. 153
[24] *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society* [2012] 2 S.C.R. 524, at paras. 23 and 34

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2. *Early Childhood Educators Act, 2007* S.O. 2007, c.7 Schedule 8, s. 31(2)
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4. *French Language Services Act*, R.S.O. 1990, c. F.32, s. 12.3(1)
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9. *Regulated Health Professions Act*, 1991, S.O. 1991, c. 18, s. 25
10. *Provincial Advocate for Children and Youth Act*, 2007, S.O. 2007, c. 9, s. 16. (4.1) 2
11. *Ombudsman Act* R.S.O. 1990, c. O.6, s. 17(2)(c)
12. *Personal Health Information Protection Act*, 2004, S.O. 2004, c. 3, Sched. A, s. 57(4)(d)
13. *Agricultural Employees Protection Act 2002*, S.O. 2002, C16, s. 13(1)
14. *Architects Act* R.S.O. 1990, c. A. 26, s. 32(5)
15. *Courts of Justice Act*, R.S.O. 1990, c. C. 43 s. 33.1
16. *Private Security and Investigative Services Act 2005*, S. O. 2005, c. C 34, s. 19(1)
17. *Professional Engineers Act* R.S.O. 1990 c. P 28, s. 26(5)
18. *Statutory Powers Procedure Act* R.S.O. 1990. c. S. 22, s. 4.6

1. *Canada Transportation Act*, S.C. 1996, c. 10 s. 67.2(1)

Canada Transportation Act
S.C. 1996, c. 10
Assented to 1996-05-29

Tariffs to be made public

- **67 (1)** The holder of a domestic licence shall
    - **(a)** display in a prominent place at the business offices of the licensee a sign indicating that the tariffs for the domestic service offered by the licensee, including the terms and conditions of carriage, are available for public inspection at the business offices of the licensee, and allow the public to make such inspections;
    - **(**a.1) publish the terms and conditions of carriage on any Internet site used by the licensee for selling the domestic service offered by the licensee;
    - **(b)** in its tariffs, specifically identify the basic fare between all points for which a domestic service is offered by the licensee; and
    - **(c)** retain a record of its tariffs for a period of not less than three years after the tariffs have ceased to have effect.

- Prescribed tariff information to be included

  (2) A tariff referred to in subsection (1) shall include such information as may be prescribed.

- No fares, etc., unless set out in tariff

  (3) The holder of a domestic licence shall not apply any fare, rate, charge or term or condition of carriage applicable to the domestic service it offers unless the fare, rate, charge, term or condition is set out in a tariff that has been published or displayed under subsection (1) and is in effect.

- Copy of tariff on payment of fee

  (4) The holder of a domestic licence shall provide a copy or excerpt of its tariffs to any person on request and on payment of a fee not exceeding the cost of making the copy or excerpt.

- 1996, c. 10, s. 67;
- 2000, c. 15, s. 5;
- 2007, c. 19, s. 20.

2. *Early Childhood Educators Act, 2007* S.O. 2007, c.7 Schedule 8, s. 31(2)

Early Childhood Educators Act, 2007
S.O. 2007, CHAPTER 7
SCHEDULE 8

Duties of Complaints Committee

31 (1) The Complaints Committee shall consider and investigate complaints regarding the conduct or actions of a member of the College, including complaints made by,

(a) a member of the public;

(b) a member of the College;

(c) the Registrar; or

(d) the Minister. 2014, c. 11, Sched. 3, s. 12 (1).

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3. *Excellent Care for All Act,* S.O. 2010 c. 14, s. 13.2(2)

Excellent Care for All Act, 2010
S.O. 2010, CHAPTER 14

Facilitated resolution

13.2 (2) The patient ombudsman shall work with the patient, former patient, caregiver or other prescribed person, the health sector organization and, when appropriate, the relevant local health integration network, to attempt to facilitate a resolution of a complaint made under subsection (1) unless, in the opinion of the patient ombudsman,

(a) the complaint relates to a matter that is within the jurisdiction of another person or body or is the subject of a proceeding;
(b) the subject matter of the complaint is trivial;
(c) the complaint is frivolous or vexatious;
(d) the complaint is not made in good faith;
(e) the patient, former patient, caregiver or other prescribed person has not sought to resolve the complaint directly with the health sector organization; or
(f) the patient, former patient, caregiver or other prescribed person does not have a sufficient personal interest in the subject matter of the complaint. 2014, c. 13, Sched. 5, s. 4.

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4. *French Language Services Act*, R.S.O. 1990, c. F.32, s. 12.3(1)

French Language Services Act
R.S.O. 1990, CHAPTER F.32

Commissioner's discretion to investigate complaints
12.3 (1) The Commissioner may, in his or her discretion, decide not to take any action based on a complaint relating to French language services, including refusing to investigate or ceasing to investigate any complaint, if, in his or her opinion,

(a) the subject-matter of the complaint is trivial;
(b) the complaint is frivolous or vexatious or is not made in good faith;
(c) the subject-matter of the complaint has already been investigated and dealt with;
(d) the subject-matter of the complaint does not involve a contravention of or failure to comply with this Act or, for any other reason, does not come within the authority of the Commissioner under this Act. 2007, c. 7, Sched. 16, s. 3.

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5. *Justices of the Peace Act* R.S.O. 1990, c. J.4, s. 11(19)

Justices of the Peace Act
R.S.O. 1990, CHAPTER J.4

Frivolous complaints, etc.
11 (19) Without restricting the powers of a complaints committee under clause (15) (a), a complaints committee may dismiss a complaint at any time if it is of the opinion that the complaint is frivolous, an abuse of process or outside the jurisdiction of the complaints committee. 2006, c. 21, Sched. B, s. 10.

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6. *Ontario College of Teachers Act*, 1996 S.O. 1996, c. 12, s. 26(2)

Ontario College of Teachers Act, 1996
S.O. 1996, CHAPTER 12

Duties of Investigation Committee

26. (1) The Investigation Committee shall consider and investigate complaints regarding the conduct or actions of a member of the College, including complaints made by,

(a) a member of the public;
(b) a member of the College;
(c) the Registrar;
(d) the Minister. 1996, c. 12, s. 26 (1); 2009, c. 33, Sched. 13, s. 2 (9); 2016, c. 24, Sched. 2, s. 5 (1).

…

Same

(2) Despite subsection (1), the Investigation Committee shall refuse to consider and investigate a complaint if, in its opinion,

(a) the complaint does not relate to professional misconduct, incompetence or incapacity on the part of a member;
(b) the complaint is frivolous, vexatious, an abuse of process, manifestly without substance or made for an improper purpose; or
(c) the complaint does not warrant further investigation or it is not in the public interest to investigate the complaint further, and that determination was made in accordance with the regulations

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7. *Coroners Act* R.S.O. 1990, c. C.37, s. 8.4 (10)(c)

Coroners Act
R.S.O. 1990, CHAPTER C.37

Refusal to review a complaint
8.4 (10) Despite subsections (4) and (5), the Chief Coroner and the Chief Forensic Pathologist may refuse to review a complaint referred to him or her if, in his or her opinion,

(a) the complaint is trivial or vexatious or not made in good faith;
(b) the complaint does not relate to a power or duty of a coroner or a pathologist under this Act; or
(c) the complainant was not directly affected by the exercise or performance of, or the failure to exercise or perform, the power or duty to which the complaint relates. 2009, c. 15, s. 4.

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8. *Police Services Act* R.S.O. 1900 c. P. 15, d. 59, s. 60(5)

Police Services Act
R.S.O. 1990, CHAPTER P.15

Independent Police Review Director to review complaints
59. (1) The Independent Police Review Director shall review every complaint made to him or her by a member of the public under this Part, and shall determine whether the complaint is about the policies of or services provided by a police force or about the conduct of a police officer. 2007, c. 5, s. 10.

Independent Police Review Director to refer, retain
(2) Subject to section 60, the Independent Police Review Director shall ensure that every complaint reviewed under subsection (1) is referred or retained and dealt with in accordance with section 61. 2007, c. 5, s. 10.

Section Amendments with date in force (d/m/y)

1997, c. 8, s. 35 - 27/11/1997

2007, c. 5, s. 10 - 19/10/2009

CTS 20 AU 14 - 1

Not affected by policy or service

60 (5) The Independent Police Review Director may decide not to deal with a complaint made by a member of the public about a policy of or service provided by a police force if the policy or service did not have a direct effect on the complainant. 2007, c. 5, s. 10.

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9. *Regulated Health Professions Act*, 1991, S.O. 1991, c. 18, s. 25

Regulated Health Professions Act, 1991
S.O. 1991, CHAPTER 18

Complaints and Reports

Panel for investigation or consideration

25 (1) A panel shall be selected by the chair of the Inquiries, Complaints and Reports Committee from among the members of the Committee to investigate a complaint filed with the Registrar regarding the conduct or actions of a member or to consider a report that is made by the Registrar under clause 79 (a). 2007, c. 10, Sched. M, s. 30.

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10. *Provincial Advocate for Children and Youth Act*, 2007, S.O. 2007, c. 9, s. 16. (4.1) 2

Provincial Advocate for Children and Youth Act, 2007
S.O. 2007, CHAPTER 9

Power not to investigate a matter

16. (4.1) The Advocate may in his or her discretion decide not to investigate, or, as the case may require, not to further investigate any matter if in his or her opinion, one of the following applies:

1. It appears to the Advocate that under the law or existing administrative practice there is an adequate remedy in respect of the matter, whether or not the person raising the matter has availed himself, herself, or itself of it.
2. The person who raised the matter with the Advocate has not a sufficient personal interest in the subject matter that was raised.

3. The matter is trivial, frivolous or vexatious or is not raised in good faith.

4. A child who is the subject of or affected by the matter indicates that he or she does not want the matter to be pursued. 2014, c. 13, Sched. 10, s. 8 (3).

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11. *Ombudsman Act* R.S.O. 1990, c. O.6, s. 17(2)(c)

Ombudsman Act
R.S.O. 1990, CHAPTER O.6

Idem

17 (2) Without limiting the generality of the powers conferred on the Ombudsman by this Act, the Ombudsman may in his or her discretion decide not to investigate, or, as the case may require, not to further investigate, any complaint if it relates to any decision, recommendation, act or omission of which the complainant has had knowledge for more than twelve months before the complaint is received by the Ombudsman, or, if in his or her opinion,

(a) the subject-matter of the complaint is trivial;

(b) the complaint is frivolous or vexatious or is not made in good faith; or

(c) the complainant has not a sufficient personal interest in the subject-matter of the complaint. R.S.O. 1990, c. O.6, s. 17 (2).

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12. *Personal Health Information Protection Act,* 2004, S.O. 2004, c. 3, Sched. A, s. 57(4)(d)

Personal Health Information Protection Act, 2004
S.O. 2004, CHAPTER 3
SCHEDULE A
PART VI
ADMINISTRATION AND ENFORCEMENT
COMPLAINTS, REVIEWS AND INSPECTIONS

No review

(4) The Commissioner may decide not to review the subject-matter of the complaint for whatever reason the Commissioner considers proper, including if satisfied that,

(a) the person about which the complaint is made has responded adequately to the complaint;

(b) the complaint has been or could be more appropriately dealt with, initially or completely, by means of a procedure, other than a complaint under this Act;

(c) the length of time that has elapsed between the date when the subject-matter of the complaint arose and the date the complaint was made is such that a review under this section would likely result in undue prejudice to any person;

(d) the complainant does not have a sufficient personal interest in the subject-matter of the complaint; or

(e) the complaint is frivolous or vexatious or is made in bad faith

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13. *Agricultural Employees Protection Act 2002,* S.O. 2002, CHAPTER 16 s. 13(1)

Agricultural Employees Protection Act, 2002
S.O. 2002, CHAPTER 16

Dismissal of proceeding

13. (1) A panel of the Tribunal appointed under subsection 14 (3.1) of the *Ministry of Agriculture, Food and Rural Affairs Act* may dismiss, without a hearing, an application under section 7 or a complaint under section 11 if it appears to the panel that,

(a) the matter is one that could or should be more appropriately dealt with under an Act other than this Act;

(b) the application or the complaint is trivial, frivolous, vexatious or made in bad faith;

(c) the application or the complaint is not within the jurisdiction of the Tribunal;

(d) some aspect of the statutory requirements for bringing the proceeding has not been met; or

(e) in the case of a complaint under section 11, the facts upon which the complaint is based occurred more than six months before the complaint was filed, unless the Tribunal is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person or entity affected by the delay. 2002, c. 16, s. 13 (1).

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14. *Architects Act* R.S.O. 1990, c. A. 26, s. 32(5)

Architects Act
R.S.O. 1990, CHAPTER A.26

Discretionary power

32 (5) The Complaints Review Councillor in his or her discretion may decide in a particular case not to make a review or not to continue a review in respect of the Association where,

(a) the review is or would be in respect of the treatment of a complaint that was disposed of by the Association more than twelve months before the matter came to the attention of the Complaints Review Councillor; or

(b) in the opinion of the Complaints Review Councillor,

(i) the application to the Complaints Review Councillor is frivolous or vexatious or is not made in good faith, or

(ii) the person who has made application to the Complaints Review Councillor has not a sufficient personal interest in the subject-matter of the particular complaint.

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15. *Courts of Justice Act*, R.S.O. 1990, c. C. 43 s. 33.1

Courts of Justice Act
R.S.O. 1990, CHAPTER C.43

Complaint
33.1 (1) Any person may make a complaint alleging misconduct by a deputy judge, by writing to the judge of the Superior Court of Justice designated by the regional senior judge in the region where the deputy judge sits. 1994, c. 12, s. 13; 1996, c. 25, s. 9 (17).

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16. *Private Security and Investigative Services Act 2005*, S. O. 2005, c. C 34, s. 19(1)

Private Security and Investigative Services Act, 2005
S.O. 2005, CHAPTER 34

PART V
COMPLAINTS AND INVESTIGATIONS
COMPLAINTS

Complaint to Registrar
19. (1) The Registrar may receive a complaint from any person alleging that a licensee has breached the code of conduct established under the regulations or alleging that a licensee has failed to comply with this Act or the regulations or has breached a condition of a licence. 2005, c. 34, s. 19 (1).

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17. *Professional Engineers Act* R.S.O. 1990 c. P 28, s. 26(5)

Professional Engineers Act
R.S.O. 1990, CHAPTER P.28

Discretionary power of Complaints Review Councillor
26 (5) The Complaints Review Councillor may decide not to make or continue a review under subsection (2) or (3) if,

(a) the review is or would be in respect of the treatment of a complaint that was disposed of by the Complaints Committee more than twelve months before the matter came to the attention of the Complaints Review Councillor; or
(b) in the opinion of the Complaints Review Councillor,
  (i) the application to the Complaints Review Councillor is frivolous or vexatious or is not made in good faith, or

(ii) the person who has made application to the Complaints Review Councillor has not a sufficient personal interest in the subject-matter of the particular complaint. R.S.O. 1990, c. P.28, s. 26 (5); 2010, c. 16, Sched. 2, s. 5 (49, 50).

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18. *Statutory Powers Procedure Act* R.S.O. 1990. c. S. 22, s. 4.6

Statutory Powers Procedure Act
R.S.O. 1990, CHAPTER S.22

Dismissal of proceeding without hearing

4.6 (1) Subject to subsections (5) and (6), a tribunal may dismiss a proceeding without a hearing if,

(a) the proceeding is frivolous, vexatious or is commenced in bad faith;

(b) the proceeding relates to matters that are outside the jurisdiction of the tribunal; or

(c) some aspect of the statutory requirements for bringing the proceeding has not been met.