

Democracy organization wins right to judicially review ethics Commissioner report (Democracy Watch v. Canada (Attorney General))

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The rule of law underpins western democracies. Without the rule of law, a society will descend into chaos. Accordingly, government powers are not unlimited and courts have the authority to ensure that the exercise of delegated powers can be judicially reviewed.

In *Democracy Watch v. Canada (Attorney General)*, 2026 SCC 28 (CanLII), the Supreme Court of Canada relied on the rule of law and the *Constitution Act, 1867* to determine that a report by the federal ethics Commissioner about former Prime Minister Trudeau's participation in two funding decisions relating to the WE Charity was reviewable notwithstanding a statutory provision which stated otherwise.

The Commissioner's report had concluded that former Prime Minister Trudeau's participation in the funding decisions did not contravene of the *Conflict of Interest Act* (the "COIA"). Democracy Watch, a private entity, disagreed with the report's conclusions and sought court intervention.

Under section 66 of the COIA, every order and decision of the Commissioner was final and could not be questioned or reviewed in any court, except in accordance with paragraphs 18.1(4)(a), (b) or (e) of the *Federal Courts Act*. These paragraphs did not apply, and the Federal Court of Appeal upheld a lower court decision which found that Democracy Watch had an adequate alternative remedy to question the report. Accordingly, a judicial review of the report was not required.

At the Supreme Court of Canada, Democracy Watch contended that the Federal Court of Appeal misapplied the doctrine of adequate alternative remedy and that section 66 of the COIA was unconstitutional because it precluded judicial review.

Under sections 96 and 101 of the *Constitution Act, 1867*, the existence of superior courts of inherent jurisdiction is guaranteed and they are seen as the primary guardians of the rule of law. Thus, any legislative efforts to limit their core jurisdiction through a privative clause that completely insulates an administrative decision-maker's ruling are *ultra vires*.

While the Attorney General of Canada submitted that based on the jurisprudence judicial review on questions of fact and law fell outside of the constitutional guarantee, the Supreme Court of Canada agreed with the position of Democracy Watch.

The Court stated that Canadian law has long recognized the power of the courts to review exercises of public power so as to guard against unlawful government action in any form. Thus, any attempt to shield administrative decisions from legality review was unconstitutional.

The Court explained that judicial review for legality was entrenched by necessary implication in the core jurisdiction of the superior courts and that legality review was constitutionally guaranteed. As a result, the privative clause in section 66 of the COIA was ruled unconstitutional because the provision prevented the Federal

Court from judicially reviewing the Commissioner's report.

The Supreme Court of Canada further found that Democracy Watch did not have an alternative remedy to challenge the report.

Although a statutory provision which provides a party with an adequate alternative forum to challenge the legality of an impugned administrative decision and to obtain a commensurate remedy will make judicial review unnecessary, Parliamentary oversight over the Commissioner's report was an inadequate remedy because it did not provide a mechanism to challenge directly the legality of the Commissioner's findings.

While the Attorney General relied on *Canada (Auditor General) v. Canada (Minister of Energy Mines and Resources)*, 1989 CanLII 73 (SCC) to contend that the COIA provided adequate political mechanisms to address the concerns of Democracy Watch about the Commissioner's report, the Supreme Court of Canada distinguished this case from Democracy Watch's case.

The Court explained that under the COIA and the *Parliament of Canada Act* (the "PCA"), the Commissioner administered the COIA and the *Standing Orders of the House of Commons*, App. II, *Conflict of Interest and Ethics Code for Members of the House of Commons* (April 2026). Although the PCA explicitly stated that the Commissioner acted under the "general direction" of the House of Commons, under [section 86\(4\)](#) the Commissioner did not act under such direction when administering the COIA in connection with "ministers of the Crown, ministers of state or parliamentary secretaries acting in their capacity as ministers of the Crown, ministers of state or parliamentary secretaries."

In *Auditor General*, the Auditor General had brought a court application against a decision of the Department of Energy, Mines and Resources and eventually the Governor in Council, which denied him access to documentation relevant to an evaluation of the use of public funds that permitted Petro-Canada, a Crown corporation, to buy Petrofina for \$1.7 billion.

In that case, the Supreme Court of Canada determined that the Auditor General had an adequate political remedy because under its enabling statute, the Auditor General could go before Parliament and seek the same remedy it was seeking from the courts.

Despite the Commissioner also having an obligation to report to Parliament, unlike the Auditor General in the *Auditor General* case, Democracy Watch, as a private entity, had no ability to go before Parliament to challenge the report or seek a remedy.

As well, the language of the COIA explicitly stated that the Commissioner's decisions were final and could "not be altered by anyone." Thus, the Supreme Court of Canada found that even if Democracy Watch could go before Parliament, a political remedy would remain elusive.

The key takeaway from this case is that courts should strongly protect the rule of law against the exercise of unlimited public powers. An exercise of an unlimited public power is not a legal power, and under the Constitution courts are supposed to ensure that some minimum of judicial review of administrative decision-makers is guaranteed.

Although Democracy Watch won the right to judicially review the Commissioner's report, this does not mean that it will ultimately succeed in its court challenge. The judicial review was remitted back to the Federal Court for determination. A PDF version is available to download [here](#).

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