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## PRACTICE

### DISCOVERY

#### *Production of Documents*

*Related Subjects: Practice (Separate determination of issues); Ethics*

Motion by applicant for disclosure of documents from Conflict of Interest and Ethics Commissioner — In underlying application for judicial review, applicant seeking to set aside Commissioner's decision concerning alleged conduct of Prime Minister in participating in two decisions involving "WE Charity" — Commissioner refusing requested disclosure, moving to strike application for judicial review — Relying upon bar against raising certain grounds of review: *Conflict of Interest Act*, S.C. 2006, c. 9, s. 66 — Court declining to hear motion to strike, adjourning matter to panel hearing merits of application — Doing so because of serious conflict in Court's case law relating to validity of bar at issue — Conflict needing to be addressed — This conflict creating problem with respect to present motion for disclosure — If ultimately panel hearing application finding that Act, s. 66 applying to bar some or all of grounds raised therein, then confidential material that never should have been disclosed will have been disclosed — *Federal Courts Rules*, SOR/98-106, r. 107(1) providing solution to problem — Allowing Court to order that issue in proceeding be determined separately — Issue here conflict in Court's case law — Underlying application therefore ordered to proceed in two stages — Legal conflict to be addressed under stage 1 — If Act, s. 66 found to apply, application may be dismissed — If Act, s. 66 found not to apply, in whole or in part, motion requiring respondent to disclose confidential information will have to be determined, followed by consideration of merits of application — Motion granted in part on other grounds.

DEMOCRACY WATCH V. CANADA (ATTORNEY GENERAL) (A-169-21, 2023 FCA 39, Stratas J.A., reasons for order dated February 21, 2023, 9 pp.)