



**FEDERAL COURT OF APPEAL**

**DEMOCRACY WATCH**

Applicant

- and -

**ATTORNEY GENERAL OF CANADA**

Respondents

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**NOTICE OF APPLICATION**  
(pursuant to sections 18 and 18.1 of the *Federal Courts Act*)

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**TO THE RESPONDENT:**

**A PROCEEDING HAS BEEN COMMENCED** by the applicant. The relief claimed by the applicant appears on the following page.

**THIS APPLICATION** will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at (place where Federal Court of Appeal (or Federal Court) ordinarily sits).

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after

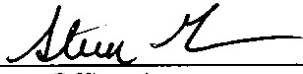
being served with this notice of application.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

**IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

**Date:** November 16, 2017

**Issued by:**

  
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(Registry Officer)

STEPHEN GREEN  
REGISTRY ASSISTANT  
ADJOINT AU GREFFIER

**Address of local office:**

Registries of the Federal Courts  
Thomas D'Arcy McGee Building  
90 Sparks Street, 5th floor  
Ottawa, Ontario  
K1A 0H9

**TO:**

Attorney General of Canada  
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## APPLICATION

**THIS IS AN APPLICATION FOR JUDICIAL REVIEW** in respect of a decision of the Conflict of Interest and Ethics Commissioner (the “Commissioner”) appointed on an interim basis under subsection 82(2) of the *Parliament of Canada Act* (R.S.C., 1985, c. P-1 – the “*PofC Act*”), and of the Commissioner’s actions in relation to the decision.

The date of the decision (the “Decision”) was February 2, 2016 but was in the form of confidential advice that the Commissioner provided under subsection 43(b) of the *Conflict of Interest Act* (S.C. 2006, c. 9, s. 2 – the “*COI Act*”) to Minister of Finance William Morneau (“Minister Morneau”), who is a public office holder as defined in the *COI Act*. A summary version of the Decision was not made public until October 17, 2017, and the letter that contains the Decision was not made public until October 19, 2017.

The Decision was a decision by the Commissioner to refuse to exercise her jurisdiction under sections 29 and 30 of the *COI Act* to order Minister Morneau to divest the stocks he owned of Morneau Shepell Inc. or to place them in a blind trust, as required under sections 17, 20 and subsection 27(1) of the *COI Act*.

The application seeks an order quashing the Decision because the Commissioner’s refusal to exercise her jurisdiction to issue the order to Minister Morneau was unlawful.

### **THE APPLICANT MAKES APPLICATION FOR:**

1. An order quashing the Decision, in accordance with the Directions of this Court;
2. Costs, and;
3. Such further and other relief as this Honourable Court deems just.

### **THE GROUNDS FOR THE APPLICATION ARE:**

1. On November 4, 2015, the day he was appointed as Minister of Finance, Minister Morneau told CBC TV: “I suspect all my assets will go into a blind trust” and “I’ve already communicated with the Ethics Commissioner in that regard.” At the time, his assets included 4.7 percent of the stocks of Morneau Shepell Inc., valued at more than \$30 million.
2. On February 2, 2016, the Commissioner issued the Decision to Minister

Morneau that stated, among other things:

“You do not personally hold any assets that are considered controlled under the Act; your RRSP is composed of open-ended mutual funds. However, because you are prohibited from holding controlled assets, should you acquire controlled assets through a gift or testamentary disposition, I would ask you to please contact our office so that we may advise you as to the compliance measures that would then be required under the Act.”

and

“Considering that you do not hold controlled assets as contemplated under section 17 of the Act a blind trust agreement is therefore not required under section 27 of the Act. However, because you have controlling interests in 2070689 Ontario limited which has controlling interest in 1193536 Alberta Ltd. which holds a significant interest in Morneau Shepell Inc., which has dealings with the Government of Canada, the Commissioner is of the opinion that the best measure of compliance would be to establish a conflict of interest screen which would be made public.”

3. The Decision letter was confidential advice that the Commissioner provided under subsection 43(b) of the *Conflict of Interest Act* (S.C. 2006, c. 9, s. 2 – the “COI Act”) to Minister Morneau.
4. Neither Minister Morneau nor the Commissioner disclosed what exactly Minister Morneau did with the stocks he owned of Morneau Shepell Inc., and specifically neither disclosed whether the Commissioner had required him to sell the stocks or put them in a blind trust, until October 17, 2017. On that day, the Ethics Commissioner told media in general terms that she had advised Minister Morneau that he “wasn’t required” to set up a blind trust when he was appointed as Minister of Finance.
5. On October 19, 2017, Minister Morneau disclosed to the media the Commissioner’s February 2, 2016 Decision letter.
6. Section 17 of the *COI Act* prohibits public office holders such as Minister Morneau from holding controlled assets except as provided in Part 2 of the *COI Act*. Part 2 includes section 20 which defines “controlled assets” as “including, but not limited to” things like “publicly traded securities of corporations...such as, but not limited to, stocks...” Part 2 also includes subsection 27(1) which requires a reporting public office holder (such as Minister Morneau) to, within 120 days of their appointment, to divest each of their controlled assets by either “(a) selling it in an arm’s-length transaction” or “(b) placing it in a blind trust...”
7. Part 2 also includes section 29 of the *COI Act* which states that the

Commissioner “shall determine the appropriate measures by which a public office holder shall comply with this Act.” Part 2 also includes section 30 of the *COI Act* which states that:

“In addition to the specific compliance measures provided for in this Part, the Commissioner may order a public office holder, in respect of any matter, to take any compliance measure, including divestment or recusal, that the Commissioner determines is necessary to comply with this Act.”

8. The Commissioner's Decision did not require Minister Morneau to comply with the specific compliance measures set out in Part 2 of the *COI Act*. Specifically, the Decision did not require Minister Morneau to sell his stocks in Morneau Shepell Inc. or place them in a blind trust, as required by section 20 and subsection 27(1);
9. Instead, the Commissioner's Decision ordered Minister Morneau to establish a “conflict of interest screen” for his stocks in Morneau Shepell Inc. There is no specific provision in the *COI Act* under which such a “screen” can be established;
10. The Commissioner's Decision refused to exercise her jurisdiction to order Minister Morneau to comply, as he was required to do, with section 20 and subsection 27(1) of the *COI Act* by selling his stocks in Morneau Shepell Inc. or placing them in a blind trust. The Commissioner's refusal was therefore unlawful;
11. The nature of the Decision and its impact directly affect the public's right to legally correct enforcement of the *COI Act*. Democracy Watch has standing to bring the present application as a public interest litigant in view of its special interest and public role within Canadian civil society in addressing issues of ethics, accountability and transparency of government institutions, which includes matters of conflicts of interest. The Applicant has a real stake in the outcome of the proceeding and the issues raised by it. The present application also represents a reasonable and effective means of bringing the Applicant's concern to Court;
12. The Federal Court of Appeal has jurisdiction to issue orders in response to this application for the relief sought based on ground that the Commissioner's Decision was an unlawful refusal to exercise jurisdiction;
13. *Parliament of Canada Act*, R.S.C., 1985, c. P-1;
14. *Conflict of Interest Act*, S.C. 2006, c. 9, s. 2;
15. *Federal Courts Act*, R.S.C., 1985, c. F-7;

16. Section 66 of the *Conflict of Interest Act*;
17. Section 28(1)(b.1) of the *Federal Courts Act*;
18. *Federal Court Rules*, 1998, SORJ98-106, and;
19. Such further and other grounds as counsel may advise and this Honourable Court may accept.

**THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL**

1. The affidavit of Duff Conacher or such other affidavit as counsel may advise;
2. The February 2, 2016 Decision of the Conflict of Interest and Ethics Commissioner, and;
3. Such further material as counsel may advise and this Honourable Court may permit.

DEMOCRACY WATCH REQUESTS, pursuant to Rule 317, the Office of the Conflict of Interest and Ethics Commissioner to send a certified copy of all documents related to the Commissioner's February 2, 2016 Decision.

November 16, 2017

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