

FEDERAL COURT

BETWEEN:

DEMOCRACY WATCH

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

AFFIDAVIT OF LEVENTE-ADRIAN BALINT

I, LEVENTE-ADRIAN BALINT, of the City of Ottawa, in the Province of Ontario

AFFIRM AS FOLLOWS:

1. I am a legal assistant with the Civil Litigation Section of the Department of Justice. I have direct knowledge of all matters hereinafter deposed to, except as otherwise stated. Where I have indirect knowledge, I have identified the source of my information and believe it to be true.

General Background to the Parliament of Canada Act

2. There are two appointment authorities for the position of Conflict of Interest and Ethics Commissioner ("COIEC") under the *Parliament of Canada Act* ("PCA"), the primary authority under subsection 81(1) of the *PCA* and the interim authority under subsection 82(2). Both are explained in greater detail below.

3. The primary authority authorizes the appointment of the COIEC by the Governor in Council (“GIC”) after consultation with every leader of every recognized party in the House of Commons and approval by resolution of the House of Commons.
4. An initial appointment under the primary authority has a statutory term of seven years and an appointee may be reappointed under that authority - using the same robust process - for additional terms up to seven years. The COIEC holds office during good behaviour, but may be removed for cause by the Governor in Council on address of the House of Commons.
5. The interim authority is to be used when the COIEC position is vacant or if there is an absence or incapacity of the COIEC and can be used to “appoint any qualified person to hold that office in the interim for a term not exceeding six months”.
6. The *PCA* has stringent eligibility requirements, which state that the COIEC must be a:
 - a) former judge of a superior court in Canada or of any other court whose members are appointed under an Act of the legislature of a province; or
 - b) former member of a federal or provincial board, commission or tribunal who, in the opinion of the Governor in Council, has demonstrated expertise in one or more of the following:
 - i. conflicts of interest, or
 - ii. financial arrangements, or

- iii. professional regulation and discipline, or
 - iv. ethics, or
 - c) a former Senate Ethics Officer or former Ethics Commissioner.
7. In addition, the *Language Skills Act* requires that the person appointed to the position of COIEC must be able to, at the time of their appointment, speak and understand clearly both official languages.

Background to the Appointment of Mary Dawson

8. Public records disclose that Ms. Dawson is the first and only person appointed as COIEC since that Office was established under the *Parliament of Canada Act* (PCA) in 2007. Prior to her appointment, Ms. Dawson was an Associate Deputy Minister with the Department of Justice.
9. Ms. Dawson was appointed twice under the primary authority, first in 2007 for seven years (July 9, 2007 – July 8, 2014) and again in 2014 for two years (July 9, 2014 - July 8, 2016).
10. I am advised by Kathleen McKillop (“Ms. McKillop”), Special Advisor with the Senior Personnel Secretariat at the Privy Council Office (“PCO”), and verily believe that in May of 2016, PCO began to take the steps necessary to launch an open selection process to appoint a COIEC under the primary authority and to obtain approvals to

appoint Ms. Dawson for an interim term of six months to ensure leadership stability in this agent of Parliament office while the selection process was underway.

11. Public records disclose that on June 30, 2016, the GiC appointed Ms. Dawson as COIEC on an interim basis, to hold office during good behaviour for a term of six months, effective July 9, 2016 and ending January 8, 2017.
12. I am advised by Ms. McKillop that the good behaviour tenure was included as a term and condition of appointment in order to confirm and reinforce the independence of the appointee in this interim role.
13. Public records disclose that the selection process to identify a new COIEC was launched in September 2016, with an initial deadline for applications of October 17, 2016. The closing date was subsequently extended to November 21, 2016 and again to January 9, 2017.
14. I am advised by Ms. McKillop and verily believe that the extensions were made in order to permit more candidates to apply in the process. In early November 2016, it seemed unlikely that the selection process could be completed before the end of Ms. Dawson's interim term and, accordingly, PCO began to take the steps necessary to obtain approval for the reappointment of Ms. Dawson for a second interim term of six months to allow for the selection process to be completed and the appointment of a COIEC under the primary authority by June 2017.

15. Public records disclose that on December 16, 2016, the GiC appointed Ms. Dawson to a second term under the interim authority to hold office during good behaviour for a term of six months, effective January 9, 2017 and ending on July 8, 2017.

16. I am advised by Ms. McKillop and verily believe that due to the rigorous statutory requirements for the position, the selection process did not yield a sufficient pool of qualified candidates. Consequently, in early April 2017, PCO began to take the steps necessary to relaunch a new selection process to appoint a COIEC under the primary authority and to obtain approvals to appoint Ms. Dawson to a third interim term of six months.

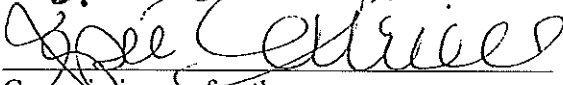
17. Public records disclose that on June 7, 2017, the GiC appointed Ms. Dawson as COIEC on an interim basis, to hold office during good behaviour for a term of six months, effective July 9, 2017 and ending January 8, 2018.

18. Public records further disclose that the selection process to appoint a COIEC under the primary authority was relaunched in June 2017 with an indication that the review of applications would commence on July 28, 2017. The application period will remain open until a qualified candidate has been identified and an appointment has been made.

19. The GiC appointment process is described on the Government of Canada website. Attached hereto and marked as Exhibit "A" is a copy of the materials describing the appointment process as well as the news release from the Prime Minister of Canada, the Right Honourable Justin Trudeau, announcing the Government's more rigorous approach to GiC appointments and its commitment to an open, transparent and merit-based selection process to support them.

20. I make this affidavit in support of the position of the Attorney General of Canada, and for no other or improper purpose.

AFFIRMED BEFORE ME)
at the City of Ottawa,)
in the Province of Ontario,)
this 24th of August 2017.)



Commissioner of oaths,



LEVENTE-ADRIAN BALINT

Josée Carrière, a Commissioner, etc., within or outside the
Province of Ontario, for the Government of Canada,
Department of Justice, Expires March 26, 2019.
Josée Carrière, commissaire, etc., à l'intérieur ou à l'extérieur de la
province de l'Ontario, au service du gouvernement du Canada,
ministère de la Justice. Date d'expiration : le 26 mars 2019.

This is Exhibit "A" referred
to in the affidavit of

LEVENTE ADRIAN BALINT

Sworn before me this 24th
day of AUGUST A.D. 2017

José Carrière
A Commr. & etc.

José Carrière, a Commissioner, etc., within or outside the
Province of Ontario, for the Government of Canada,
Department of Justice. Expires March 26, 2019.
Josée Carrière, commissaire, etc., à l'intérieur ou à l'extérieur de la
province de l'Ontario, au service du gouvernement du Canada,
ministère de la Justice. Date d'expiration : le 26 mars 2019.

Source:

<https://www.appointments-nominations.gc.ca/prsnt.asp?menu=1&page=approt&lang=eng>

<https://www.appointments-nominations.gc.ca/prsnt.asp?menu=1&page=approt&lang=fra>

Governor in Council appointments

Governor in Council (GIC) appointments are those made by the Governor in Council—the Governor General acting on the advice of Cabinet. An Order in Council is the legal instrument, which, when signed by the Governor General, formalizes an appointment.

The Government of Canada is accountable to all Canadians and is committed to serving them as effectively and efficiently as possible in pursuit of the public interest.

Individuals appointed by the GIC play an important role in Canada's democracy by serving on commissions, boards, Crown corporations, agencies and tribunals across the country. The responsibilities are diverse, ranging from making adjudicative decisions and providing advice and recommendations on a wide variety of issues to the management of large, diversified corporations. GIC appointees have a direct impact on the lives of citizens and make a significant contribution to Canadian society.

To maintain public confidence in government decision making, the Government of Canada is committed to filling GIC positions with highly qualified candidates who reflect Canada's diversity. Our country is stronger, and our government more effective, when decision makers reflect Canada's diversity.

The Senior Personnel Secretariat in the Privy Council Office supports the GIC appointments process for some 2,000 GIC positions on behalf of the Prime Minister and his Office.

Open, transparent, and merit-based selection processes

As announced by the Prime Minister in February 2016, the Government is committed to open and transparent processes for selecting GIC appointees, to help strengthen trust in Canada's democracy and ensure the integrity of its public institutions.

The selection approach is also merit-based. It is designed to identify highly qualified candidates who are committed to the principles of public service and embrace public service values. Candidates must be able to perform their duties with integrity and the highest levels of ethical behaviour and professionalism.

The positions

Selection processes are being used to fill the majority of both full-time and part-time GIC positions across the country. The approach described here includes:

- ✧ Heads and members of agencies, boards and commissions;
- ✧ Chairs and members of administrative and adjudicative tribunals;

- ✦ Agents and Officers of Parliament;
- ✦ Ombudspersons; and
- ✦ Chairpersons, directors, and chief executive officers of Crown corporations.

In exceptional circumstances, such as the need to ensure business continuity, interim appointments or reappointments of up to one year may be made (subject to any legislative provisions) to allow time for the completion of a selection process.

- ✦ Glossary of terms

The principles

In general, selection processes are guided by the following principles:

- ✦ **Open:** Selection processes are open to all Canadians, to provide them with an opportunity—should they be interested and have the required qualifications—to participate in their democratic institutions by serving as GIC appointees.
- ✦ **Transparent:** Clear information about the requirements and steps involved in the selection process are readily available to the public, in order to reach as many Canadians as possible and attract a strong and diverse field of highly qualified candidates. Appointments are publicly available on the Privy Council Office Orders in Council database.
- ✦ **Merit:** The selection process is designed to identify highly qualified candidates who meet the needs of the organization and are able to perform the duties of the position to which they would be appointed. It seeks individuals who have the qualifications (education, experience, knowledge, skills, and abilities) and personal suitability to fill the position, and who are able to meet any statutory and/or other conditions that may be required.
- ✦ **Diversity:** Recruitment strategies seek to attract qualified candidates who will also help to reflect Canada's diversity in terms of linguistic, regional, and employment equity groups (i.e., women, Indigenous Canadians, persons with disabilities, and members of visible minorities) as well as members of ethnic and cultural groups. With few exceptions, the government seeks to appoint bilingual candidates to GIC positions.

Exceptions to the approach to Governor in Council appointments

Some appointments are not subject to the same types of selection processes. This can be because of legislative requirements which establish specific processes for an appointment or specify the need for particular professional qualifications. It can also be to meet policy goals—such as ensuring a non-partisan public service—or operational requirements—such as having an appropriate mix of knowledge or perspectives to support decision making. Exceptions include:

Appointments through a different mechanism: The Governor General, Lieutenant Governors, Senators, Ministers, and parliamentary secretaries are appointed through different mechanisms or processes.

Deputy Ministers: Deputy minister and associate deputy minister appointments are managed through the Clerk of the Privy Council's advice to the Prime Minister. This distance from political oversight by Cabinet is integral to maintaining a non-partisan public service.

Judicial appointments: Judicial appointments are managed by the Minister of Justice in a separate process.

Heads of Mission/Consuls: These are ambassadors, high commissioners, permanent representatives or consuls-general who are appointed to represent the Government of Canada to a country, international organization, or diplomatic conference and are designated head of mission by the GIC. These appointments are managed by the Minister of Foreign Affairs in a separate process. There are also a number of Honorary Consuls appointed to represent Canada abroad.

Territorial Commissioners: The appointments of territorial commissioners are made by the GIC, generally on the recommendation of the Minister of Indigenous and Northern Affairs, and are managed in a separate process.

Ministerial Advisors: In most cases, a ministerial advisory committee or panel is struck for a specific purpose, and advisors are chosen with a view to ensuring a Minister has a group of individuals who, together, comprise the appropriate mix of experience, skills, knowledge and perspectives to support the Minister's decision making.

Third-Party recommendations or require professional qualification requirements: Some appointments are managed through a separate process because there is a legislative requirement for a recommendation by a third party or a legislative requirement for specific professional qualifications. Examples include:

- ✦ Canada Revenue Agency Board of Management Provincial and Territorial Directors (recommended by provincial governments)
- ✦ First Nations Renewable Resources Board (recommended by First Nation government)
- ✦ Public Servants Disclosure Protection Tribunal (appointee must be a judge).

Other appointments: The GIC also makes other appointments (e.g., Provincial Administrators, Deputy Judges in the Territories, RCMP Deputy Commissioners and Commanding Officers, Commissioners of Oaths, and Official Receivers). Given the unique and specific nature of these appointments, a different mechanism is used.

selection criteria for the position being filled and a closing date. A list of currently open and upcoming notices is published in the *Canada Gazette* each week. Other outreach activities may be undertaken as required, to encourage all interested candidates to apply.

✦ Current opportunities

Registering and applying

To facilitate the application process, individuals interested in a GIC opportunity must register for an account. Through this account, they can view appointment opportunities, build and update their profile as required, and apply for positions. It is the portal for submitting applications online.

In their online profile, applicants are asked to provide information on their second official language proficiency. They are also able to self-identify, if they wish, as members of an employment equity group (i.e., women, Indigenous Canadians, persons with disabilities, and members of visible minorities). Candidates may also choose to self-identify as members of an ethnic or cultural group.

Interested applicants should ensure that their application, which normally consists of a cover letter and curriculum vitae, addresses how they meet the education and experience criteria outlined in the Notice of Appointment Opportunity.

✦ Create an account

Assessing candidates

Candidates are assessed through a variety of means at various points in the process. This includes screening an application against the selection criteria. It could also include an initial discussion with a search firm that has been engaged to support the selection committee. In the case of member positions on administrative and adjudicative tribunals, candidates are asked to write an online test to assess their ability to synthesize information and write clear, concise, and well-reasoned decisions.

A short list of qualified candidates are interviewed by the selection committee. Interviews may be held in person or by using current technologies such as videoconferencing or Skype. As the government has indicated its desire for candidates to be proficient in both official languages, candidates are asked at least one question in their second official language.

Candidates for bilingual positions may be asked to undergo an evaluation of their oral, reading, and writing proficiency in their second official language. For leadership positions, candidates may be asked to undergo other assessments to determine their personal suitability for the position. Third-party reference checks may also be undertaken.

In some cases, other assessments may be required. For example, legislation requires that Agents of Parliament be approved by a Parliamentary committee as part of their appointment process.

Identifying highly qualified candidates

Following the assessment of candidates, the Selection Committee Chair submits an advice letter to the Minister identifying the candidates found to be most highly qualified for appointment. Based on this advice, the Minister then makes a recommendation to the GIC for appointment.

For organizations where a number of similar positions are currently vacant—or will, within two years, become vacant (e.g., administrative and adjudicative tribunals, boards or commissions with multiple member positions, or directors on the boards of Crown corporations)—a roster of highly qualified candidates may be established, for a defined period of time. Being placed on the roster is not a guarantee of appointment and the establishment of a roster does not preclude launching further selection processes for positions.

Timing

The length of the process from start to finish is difficult to predict, as it is dependent on many factors, such as the nature and responsibility of the position and the availability of applicants and selection committee members for the interview process.

Privacy

Confidentiality of the GIC selection process is paramount. All government departments and organizations are responsible for protecting personal information and respecting all Privacy Act requirements.

The appointment process

Normally, the responsible Minister recommends the appointment to the GIC. There are a few instances where there is a legislative requirement for a Board or a third-party recommendation. In all cases the appointment recommendation is transmitted to the GIC via the responsible Minister.

Due diligence review

Prior to an appointment being made, the Privy Council Office ensures that the proposed appointment meets all applicable statutory provisions and policy requirements:

- * Statutory provisions may include specific education or experience, citizenship or residence requirements, conflict of interest or eligibility restrictions, term limits or the

staggering of terms of members of boards, commissions, or administrative and adjudicative tribunals.

- ✳ Policy requirements include potential conflict of interest, lobbying and political activities, and confirmation that the policy for selection processes was respected.

The Privy Council Office also conducts background checks on all candidates for GIC appointment. This involves a review by the RCMP (police records), the Canadian Security Intelligence Service (loyalty to Canada assessment), and the Canada Revenue Agency (tax compliance-related infractions). For some positions this could be augmented by a review by the Office of the Superintendent of Bankruptcy (bankruptcy and insolvency database).

In some cases, a security clearance may be undertaken prior to appointment, if required for the position. Security clearances are governed by the Treasury Board Policy on Government Security.

Establishing compensation and terms and conditions of employment

Compensation and terms and conditions of employment are not considered in the selection process. In some cases, compensation and other terms and conditions of employment are set by statute. When not governed by statute, compensation and terms and conditions of employment for GIC appointees are largely set by the GIC. Established policies and frameworks ensure fairness and equity among appointees. Prior to appointment, the Privy Council Office informs full time appointees of applicable compensation and other terms and conditions of employment.

Once this is complete, the Minister's recommendation is considered by Cabinet. Once approved by Cabinet, appointments are made through an Order in Council, which is approved by the Governor General. This normally specifies the start date of the appointment, the term of office, compensation, and any other applicable terms and conditions.

As for the specified conditions, the tenure of an appointment can be either "during good behaviour" (may only be removed for cause) or "during pleasure" (may be removed at the discretion of the GIC).

The term of an appointment can be for either a specific or indeterminate period. When a specific period is indicated, the appointment lapses at its expiration, unless there is a legislative provision to the contrary. The appointee may be reappointed to the same position at the discretion of the GIC. In some cases, statutory provisions prohibit or set limits to reappointment to the same position.

For more information, consult the Terms and Conditions of Employment for Full-Time Governor in Council Appointees.

Guidelines for GIC appointees

Specific statutes and guidelines govern the conduct and actions of GIC appointees while in office. Each of the following links to a more detailed description:

The [Conflict of Interest Act](#) establishes conflict of interest and post-employment compliance measures for public office holders. The Act is administered by the Conflict of Interest and Ethics Commissioner.

[Open and Accountable Government](#) defines the [Ethical and Political Activity Guidelines for Public Office Holders](#), including:

- ✧ The [Ethical Guidelines and Statutory Standards of Conduct](#) outline four ethical principles that must be adhered to by all public office holders.
- ✧ The [Guidelines for the Political Activities of Public Office Holders](#) are based on the general principle that public office holders should not participate in any political activity which might impair, or be seen to impair, their ability to discharge their duties in a politically impartial manner or cast doubt on the integrity or impartiality of the office.

Specific positions may be subject to other guidelines or restrictions.

Communicating Governor in Council appointments

Once an appointment has been approved by the GIC, the Minister's office notifies the successful candidate. The Prime Minister or the responsible Minister may announce the appointment. The organization with the vacancy may also issue a news release announcing the appointment. Appointment Orders in Council are posted on the Privy Council Office's [Orders in Council database](#) and the appointment is also posted on the [GIC appointments website](#). The names of most appointees are published in the [Canada Gazette](#).

Under the [Standing Orders of the House of Commons](#), within five days of a non-judicial appointment being published in the [Canada Gazette](#), it is tabled in the House of Commons and is deemed to be referred to the appropriate committee for review. The committee has 30 sitting days to review the appointment, which may include calling the appointee to appear in order to examine his/her qualifications. The appointment is not affected and cannot be overturned as a result of this review. For Agents of Parliament, no appointment can be made until Parliament (either the House of Commons or the Senate or both) has passed motions approving the nomination.

Communicating with applicants

All applicants are informed of the result of the selection process by email once the process is complete. Candidates are encouraged to apply for other processes.

In cases where a roster is created, roster candidates are notified by email that they have been found qualified for appointment to the position for which they applied and may be selected for appointment for a period of two years (from the date the advice letter is sent to the Minister adding them to the roster).

Incumbents

Incumbents who were appointed through the open, transparent, merit-based selection process established in February 2016 may be reappointed to the same position at the end of their term, as long as there are no statutory restrictions. Reappointment recommendations will be merit-based. Merit will be assessed through a process that is reflective and appropriate for the organization's mandate and operating context.

Once a Minister has made a decision whether or not to recommend to the GIC to reappoint, it is a best practice to inform incumbents so that they may, in turn, arrange their personal and professional affairs; however, this may not always be possible due to the discretionary nature of the appointment.

The Minister's decision whether to recommend a reappointment or not may be influenced by many factors, and it is the GIC that is vested with the discretion and authority to make such decisions. Accordingly, it is important that appointees who are recommended for reappointment understand that continuing employment beyond the end date set out in their Order in Council is only confirmed upon approval of the GIC, except in the case where legislative provisions provide otherwise, and individuals should plan their affairs accordingly.

Incumbents who were not appointed through the open, transparent, merit-based selection process established in February 2016, and are interested in continuing to serve, must apply through a selection process.

Source:

<http://pm.gc.ca/eng/news/2016/02/25/prime-minister-announces-new-governor-council-appointment-process>

<http://pm.gc.ca/fra/nouvelles/2016/02/25/premier-ministre-annonce-nouvelle-approche-les-nominations-gouverneur-conseil>

JUSTIN TRUDEAU, PRIME MINISTER OF CANADA

Prime Minister announces new Governor in Council appointment process

Ottawa, Ontario

February 25, 2016

The Government of Canada is moving quickly to apply a more rigorous approach to Governor in Council (GIC) appointments. The selection process will reflect the fundamental role that more than 1500 Canadians play in our democracy as they serve on commissions, boards, Crown corporations, agencies, and tribunals across the country.

The Prime Minister, Justin Trudeau, today announced the new approach – one where an open, transparent, and merit-based selection process will support Ministers in making appointment recommendations for positions within their portfolio. The new strategy will result in the recommendation of high-quality candidates who truly reflect Canada’s diversity.

The new approach will apply to the majority of non-judicial appointments, and will make hundreds of part-time positions subject to a formal selection process for the first time.

Until the new approach has been implemented, appointments or re-appointments will only be made to positions essential to government business or to those that deliver important services to Canadians. These appointments and re-appointments will be for up to one year in length, subject to legislative provisions.

Quote

“We are committed to raising the bar on openness and transparency in government to make sure that it remains focused on serving Canadians as effectively and efficiently as possible. Government must serve the public interest, and remain accountable to Canadians.”

- Rt. Hon. Justin Trudeau, Prime Minister of Canada

