



FEDERAL COURT OF APPEAL

DEMOCRACY WATCH

Applicant

- and -

**CONFLICT OF INTEREST AND ETHICS COMMISSIONER
AND
ATTORNEY GENERAL OF CANADA
AND
PRIVY COUNCIL OFFICE**

Respondents

NOTICE OF APPLICATION

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

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

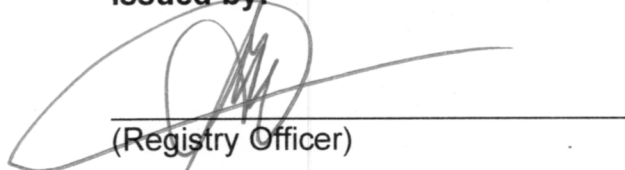
step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, **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: May 16, 2017

Issued by:



(Registry Officer)
Gina M. Smith

Address of local office:

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

TO:

Conflict of Interest and Ethics Commissioner Mary Dawson
Office of the Conflict of Interest and Ethics Commissioner
Parliament of Canada
66 Slater Street, 22nd Floor
Ottawa, Ontario
K1A 0A6
Telephone: 613-995-0721
Fax: 613-995-7308

Mailing address:

Office of the Conflict of Interest and Ethics Commissioner
Parliament of Canada
Centre Block, P.O. Box 16
Ottawa, Ontario
K1A 0A6

Attorney General of Canada
c/o William F. Pentney, Deputy Attorney General of Canada
Office of the Deputy Attorney General of Canada
284 Wellington Street
Ottawa, Ontario
K1A 0H8
Tel: 613-997-4998
Fax: 613-954-0811

Privy Council Office
Room 1000
85 Sparks Street
Ottawa, Ontario
K1A 0A3
Tel: 613-957-5153
Fax: 613-957-5043

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*").

The date of the decision was March 29, 2017 (the "Decision"), and was a decision by the Commissioner not to recuse herself from investigating and ruling on allegations of violations by Prime Minister Trudeau and other members of the Governor in Council ("Cabinet") issued under section 45 of the *Conflict of Interest Act* (S.C. 2006, c. 9, s. 2 – the "*COI Act*") that establishes the process for investigating and ruling on such allegations.

The application seeks an order quashing the Decision because of: 1. a reasonable apprehension of bias on the part of the Commissioner given that the Commissioner was given a second six-month interim appointment as Commissioner by the Trudeau Cabinet in December 2016 (possibly renewable by the Cabinet) at the time the Commissioner was considering allegations of violations of the *COI Act* by Prime Minister Trudeau and various Cabinet ministers; 2. specific bias against Democracy Watch, and; 3. in the alternative, that the second six-month interim appointment of the Commissioner by the Trudeau Cabinet violates the *PofC Act*. The Commissioner therefore failed to observe principles of natural justice in making the Decision and/or the Commissioner's current position is unlawful, and therefore the Commissioner's Decision is unlawful.

THE APPLICANT MAKES APPLICATION FOR:

1. An order quashing the Decision of March 29, 2017 and remitting the matter back to the Commissioner 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 December 6, 2016, December 14, 2016, December 16, 2016 and January 31, 2017, Democracy Watch filed complaint letters with the

Commissioner alleging violations of the *COI Act* and the *Conflict of Interest Code for Members of the House of Commons* (“MPs Code”) by Prime Minister Trudeau, various Cabinet ministers, a Liberal Member of Parliament (“MP”), and a Conservative MP. Some MPs also filed complaints with the Commissioner during this time period concerning some of the same situations;

2. The three complaint letters Democracy Watch filed in December 2016 requested that the Commissioner recuse herself from investigating and ruling on the complaints because of the reasonable apprehension of bias on the part of the Commissioner given that the Commissioner was serving a six-month interim appointment as Commissioner under Order in Council 2016-0661 issued pursuant to section 82(2) of the *PofC Act*, an appointment that was possibly renewable by Prime Minister Trudeau and the Cabinet;
3. The reasonable apprehension of bias on the part of the Commissioner also existed because the Cabinet was also considering in December 2016 whom to appoint as Commissioner for a seven-year term, and the Commissioner was eligible to be reappointed for that term pursuant to subsection 82(3) of the *PofC Act*. Despite requests from Democracy Watch and several journalists in November and December 2016, the Ethics Commissioner had refused to disclose whether she had applied to be reappointed for another seven-year term;
4. On December 16, 2016, with Order in Council 2016-1148 issued pursuant to section 82(2) of the *PofC Act*, His Excellency the Governor General in Council (the “Governor General”), on the recommendation of Prime Minister Trudeau, reappointed the Commissioner for a second six-month interim appointment as Commissioner, effective January 9, 2017. The reappointment is possibly renewable for another six-month term when it expires on July 9, 2017;
5. In its January 31, 2017 complaint letter, in addition to alleging violations of the *COI Act* and *MPs Code* by Prime Minister Trudeau and two MPs, Democracy Watch requested that the Commissioner recuse herself from investigating and ruling on matters concerning Prime Minister Trudeau and the Cabinet, and Liberal and opposition party MPs, because of the reasonable apprehension of bias on the part of the Commissioner given that the Commissioner was serving a second six-month interim appointment as Commissioner that was possibly renewable by Prime Minister Trudeau recommending its renewal to the Governor General;
6. In her Decision dated March 29, 2017, the Commissioner finally responded to Democracy Watch’s four complaint letters. The Decision was that the Commissioner refused to recuse herself from ruling on the

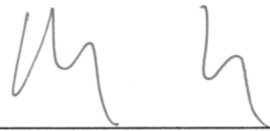
allegations set out in the four complaint letters, and also refused to investigate and/or rule on some of the allegations;

7. The nature of the Decision and its impact directly affect the public's right to impartial decisions on alleged violations 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 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;
8. The Commissioner, in issuing her Decision of March 29, 2017, failed to observe a principle of natural justice, namely that an administrative tribunal decision-maker is required to recuse himself/herself if there is a reasonable apprehension of bias concerning her/him;
9. The Ethics Commissioner has also failed to observe a principle of natural justice and shown specific bias against Democracy Watch by: (a) taking up to four months to respond to some of Democracy Watch's complaint letters filed in December 2016 and January 2017, in contrast to responding within days to complaint letters filed by Members of Parliament, and; (b) failing to respond in her Decision to three complaints by Democracy Watch set out in letters filed with the Ethics Commissioner on December 16, 2016 (the complaint about Prime Minister Trudeau inviting Liberal Party donors to a gala event for China's Premier) and January 31, 2016 (the parts of that complaint letter concerning the trip gift from the Aga Khan to Prime Minister Trudeau in December 2014, and the trip gift from Murray Edwards to Rona Ambrose);
10. In the alternative, the Commissioner's second six-month interim appointment as Commissioner violates subsection 82(2) of the *PofC Act* which states that if the Commissioner's office is vacant, "...the Governor in Council may appoint any qualified person to hold that office in the interim for a term not exceeding six months...";
11. Therefore, the Commissioner's March 29, 2017 Decision violates principles of natural justice and is unlawful;
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 March 29, 2017 Decision violates a principle of natural justice and is unlawful;
13. *Parliament of Canada Act*, R.S.C., 1985, c. P-1;

Commissioner's office, and the Privy Council Office and the Office of the Prime Minister related to the appointment and reappointment;

- Any documents of the Commissioner's office related to the appointment and reappointment, and;
- Any documents of the Privy Council office related to the appointment and reappointment.

May 16, 2017



Raven, Cameron, Ballantyne and
Yazbeck, LLP/s.r.l.
1600 - 220 Laurier Ave. W.
Ottawa, ON
K1P 5Z9

Per: David Yazbeck (LSUC # 34063R)
Tel: 613-567-2901
Fax: 613-567-2921

Solicitor for the Applicant, Democracy
Watch