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	September 14, 2021 14 septembre 2021
Natasha Brant	
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Court File No.:

FEDERAL COURT

DEMOCRACY WATCH and WAYNE CROOKES

Applicants

- and -

**PRIME MINISTER OF CANADA
COMMITTEE OF THE PRIVY COUNCIL
ATTORNEY GENERAL OF CANADA**

Respondents



NOTICE OF APPLICATION
(pursuant to clause 18.1(4) of the *Federal Courts Act*)

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicants. The relief claimed by the applicants 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 applicants. The applicants request that this application be heard at Ottawa.

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 applicants' solicitor,

or where the applicants are self-represented, on the applicants, **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: September 14, 2021

Issued by:

(Registry Officer)

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
c/o Nathalie G. Drouin, Deputy Attorney General of Canada
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APPLICATION

THIS IS AN APPLICATION FOR JUDICIAL REVIEW in respect of the decision of Prime Minister Justin Trudeau (the “Prime Minister”) to advise the Governor General of Canada (“Governor General”) to call a snap election.

The date of the decision (the “Decision”) was August 15, 2021 in the form of Order in Council 2021-0892.

In making the Decision, the Prime Minister acted contrary to law, in contravention of subsection 56.1 of the *Canada Elections Act* which requires that the next federal election be held on the third Monday in October 2023 unless, under the unwritten constitutional “confidence convention” that underlies section 56.1, a vote of non-confidence occurs in Parliament before that October 2023 fixed election date.

Therefore, the application seeks an order declaring that the Prime Minister’s Decision was unlawful.

THE APPLICANTS MAKE APPLICATION FOR:

1. An order and declaration that the Prime Minister and Committee of the Privy Council violated subsection 56.1(2) of the *Canada Elections Act* (S.C. 2000, c. 9) by advising, in Order in Council 2021-0892 on August 15, 2021, the Governor General of Canada to issue writs of election;
2. Costs, and;
3. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE APPLICATION ARE:

A. Section 56.1 requires that each election must be held on the fixed election date, unless a non-confidence vote occurs before that date

1. Section 56.1 of the *Canada Elections Act* states:

Date of General Election

Powers of Governor General preserved

56.1 (1) Nothing in this section affects the powers of the Governor General, including the power to dissolve Parliament at the Governor General's discretion.

Election dates

(2) Subject to subsection (1), each general election must be held on the third Monday of October in the fourth calendar year following polling day for the last general election, with the first general election after this section comes into force being held on Monday, October 19, 2009.

2. The intent of subsection 56.1 is clear in its plain wording – to require that “each general election must be held” on the third Monday in October four years after the previous general election.
3. While subsection 56.1(1) states that the section does not affect the power and discretion of the Governor General to dissolve Parliament, by constitutional convention the Governor General will only dissolve Parliament on the advice of the Prime Minister. The Governor General may decline to follow the Prime Minister's advice but will only dissolve Parliament when advised to do so by the Prime Minister.
4. Subsection 56.1 does not include a provision stating that nothing in the section affects the power and discretion of the Prime Minister to advise the Governor General to issue writs of election.
5. The “confidence convention” establishes that Parliament may be dissolved if a vote of non-confidence in the presiding Government of Canada occurs in Parliament.
6. As with all federal and provincial statutes, section 56.1 automatically incorporates all the constitutional conventions that apply in the situations addressed by the provision. That subsection 56.1 does not mention the confidence convention does not make the provision less clear that it

- prohibits the Prime Minister from calling an election before the fixed election date, with the only reasonable justification for calling an election before that date being if a vote of non-confidence in the government occurs in Parliament.
7. Similarly, subsection 56.1(1) does not mention the convention that the Governor General will only exercise the power to dissolve Parliament for an election when advised to do so by the Prime Minister. It is not required to be mentioned because the convention is automatically incorporated into subsection 56.1(1), as is the confidence convention which is also automatically incorporated into subsection 56.1(2).
 8. Given the convention was well-established, before subsection 56.1(2) was enacted in 2007, that the Governor General will only call an election when advised to do so by the Prime Minister, the prohibition in subsection 56.1(2) on the Prime Minister advising the Governor General to call an election before the fixed election date (unless a vote of non-confidence occurs) does not amend the office of the Governor General. The subsection 56.1(2) prohibition applies only to the Prime Minister.
 9. In 2011, the general election was not held on the every-four-years fixed election date. It was held on May 2nd, only two years and seven months after the October 2008 election, because a vote of non-confidence in the government occurred in Parliament on March 25, 2011 and, accordingly, the Prime Minister advised the Governor General to issue writs of election.
 10. Four years later, in 2015, the general election was held on the fixed election date of the third Monday in October, after the Prime Minister advised the Governor General to issue writs of election.
 11. Four years later, in 2019, the general election was held on the fixed election date of the third Monday in October, after the Prime Minister advised the Governor General to issue writs of election.
 12. Prime Minister Harper complied with subsection 56.1(2) in 2011 and 2015, and Prime Minister Trudeau complied with 56.1(2) in 2019, thereby establishing a constitutional convention that supports the interpretation of 56.1(2) as a measure that fixes the date of a federal general election dates for every four years, with the only reasonable justification for calling an election before that date being if a vote of non-confidence in the government occurs in Parliament.

13. Subsection 56.1(2), which provides that “each” general election “must be held” only on the third Monday in October four years after the previous election, thereby clearly prohibits the Prime Minister from advising the Governor General to issue writs of election during the four-year period. The only reasonable justification for the Prime Minister to advise calling an election before that date is if a vote of non-confidence in the government occurs in Parliament.
14. Given the last general election was held in October 2019, under subsection 56.1(2), the date on which the next general election “must be held” is the third Monday in October in the fourth calendar year following polling day, which is October 16, 2023.
15. Prime Minister Trudeau and the Committee of the Privy Council advised the Governor General to issue writs of election on August 15, 2021, only two years and 10 months after the 2019 general election, when Parliament was adjourned for the summer recess.
16. According to votes in the House of Commons before Parliament was adjourned, including votes approving the government’s Speech from the Throne and budget Bill C-30, and according to public statements by opposition party leaders, including letters to the Governor General and the Prime Minister from some parties, the government held the confidence of Parliament, and the leaders of parties representing a majority of MPs wanted Parliament to continue operating, when the Prime Minister advised the Governor General on August 15, 2021 to call a snap election;
17. According to a resolution passed 327-1 on May 25, 2021 in the House, and according to public statements by opposition party leaders, including letters to the Governor General and the Prime Minister from some parties, a large majority of MPs opposed the Prime Minister’s snap election call and wanted Parliament to continue operating;
18. Given four years had not passed since the last election, the government held the confidence of Parliament, a large majority of MPs wanted Parliament to continue operating and, as a result, the Prime Minister had no reasonable justification for calling a snap election, the Prime Minister’s decision to advise the Governor General to call an election on August 15, 2021 contravened subsection 56.1(2) of the *Canada Elections Act*.

B. The Applicants have public interest standing

19. The Prime Minister's Decision to advise the Governor General is justiciable and reviewable because at issue is whether the Prime Minister's discretionary exercise of prerogative power was in accordance with the law, and this Application asks the court to declare that the Prime Minister's action contravened a federal statute, namely subsection 56.1(2) of the *Canada Elections Act*;
20. The Applicant Democracy Watch, as an organization that has applied for, and granted standing for, judicial review of a snap election call by a former Prime Minister, and for judicial review of snap election calls by the Premier of British Columbia, and the Premier of New Brunswick, has a genuine interest in the issues raised by the Decision;
21. This application is a reasonable and effective way to bring the issues to court. Democracy Watch is likely the only interested party having the experience and ability to initiate legal proceedings to ensure that the Prime Minister complies with his legal obligations. There is no other "directly affected" party who could launch an application for judicial review other than the Prime Minister who would not challenge his own decision, and there is no other reasonable and effective way to bring this matter before the Court;

C. This Honourable Court has jurisdiction to issue orders for the relief sought

22. This Honourable Court has jurisdiction under subsection 18.4(1)(f) to issue a declaration that the Prime Minister's Decision was contrary to law;
23. *Canada Elections Act*, R.S.C., S.C. 2000, c. 9;
24. *Federal Courts Act*, R.S.C., 1985, c. F-7;
25. Subsection 18.1(4) of the *Federal Courts Act*;
26. *Federal Court Rules*, 1998, SORJ98-106, and;
27. 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 August 15, 2021 Decision of the Prime Minister and Committee of the Privy Council, 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 Prime Minister and the Office of the Committee of the Privy Council to send a certified copy of all documents related to the August 15, 2021 Decision of the Prime Minister and the Committee of the Privy Council.

September 14, 2021



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