

Court File No.:

T-1169-16



FEDERAL COURT OF APPEAL

DEMOCRACY WATCH

Applicant

- and -

CONFLICT OF INTEREST AND ETHICS COMMISSIONER

Respondent

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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).

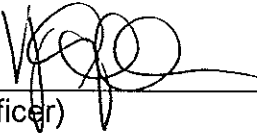
**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's 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: July 14, 2016

Issued by:

  
\_\_\_\_\_  
(Registry Officer)

**VALERIE JEAN-GILLES  
REGISTRY OFFICER  
AGENT DU GREFFE**

Address of local office:

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

I HEREBY CERTIFY that the above document is a true copy of the original filed in the Court./

JE CERTIFIE que le document ci-dessus est une copie conforme à l'original déposé au dossier de la Cour fédérale.

Filing date  
Date de dépôt

JUL 14 2016

JUL 14 2016  
Dated  
Fait le



TO:

Conflict of Interest and Ethics Commissioner Mary Dawson  
Office of the Conflict of Interest and Ethics Commissioner  
Parliament of Canada  
66 Slater Street, 22<sup>nd</sup> Floor  
Ottawa, Ontario  
K1A 0A6  
Telephone: 613-995-0721  
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**VALERIE JEAN-GILLES  
REGISTRY OFFICER  
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Mailing address:

Office of the Conflict of Interest and Ethics Commissioner  
Parliament of Canada  
Centre Block, P.O. Box 16  
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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 under section 81 of the *Parliament of Canada Act* (R.S.C., 1985, c. P-1).

The date of the decision was July 12, 2016 (the "Decision"), and was a compliance order for Dominic LeBlanc (the "public office holder") issued under section 29 of the *Conflict of Interest Act* (S.C. 2006, c. 9, s. 2 – the "Act") that established the terms and conditions of a "conflict of interest screen."

The application seeks an order quashing the Decision because the screen it establishes recuses the public office holder from discussions, decisions and votes on matters in which the office holder has a conflict of interest (as required under s. 21 of the *Act*). However, the screen allows the public office holder to violate subsection 25(1) of the *Act* which requires a public office holder to issue a public declaration setting out the details of each recusal. The Decision is therefore unlawful and exceeds the Commissioner's jurisdiction under the *Act*.

### THE APPLICANT MAKES APPLICATION FOR:

1. An order quashing the Decision of July 12, 2016 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 Honorable Court deems just.

### THE GROUNDS FOR THE APPLICATION ARE:

1. On July 12, 2016, the Commissioner issued a compliance order (the "Decision") for Dominic LeBlanc under section 29 of the *Conflict of Interest Act* (the "**Act**") purporting to be a generalized declaration in relation to avoiding future conflicts of interests. The order circumvents the statutory requirement that the public office holder make a specific, detailed, public declaration each time the office holder removes herself from a decision-making process to avoid a conflict of interest;
2. The "conflict of interest screen" established by the Commissioner in the Decision requires the public office holder, in "order to prevent a conflict of interest situation from arising" to "abstain from participation in any matters or decisions" under certain conditions;
3. The Commissioner's requirement under the screen is not only worded essentially the same as section 21 of the *Act* (which requires a public

office holder to recuse himself or herself from decisions on matters to avoid a conflict of interest), it also has exactly the same legal effect as the requirement set out in section 21;

4. The conflict of interest screen established by the Commissioner in the Decision purports to distinguish itself from a "recusal" under section 21 of the *Act* and also pretends it does not have the same legal effect as recusal by including the following statement: "In the event that any issue or matter that is subject to the conflict of interest screen is not caught by that screen and comes before me, I undertake to recuse myself from that issue or matter, as required by Section 21...";
5. By pretending not to be the same and not to have the same legal effect as a recusal under section 21 of the *Act*, the conflict of interest screen established by the Commissioner's July 12, 2016 decision allows the public office holder to violate the requirement set out in subsection 25(1) of the *Act* that an office holder issue a public declaration each time the office holder removes himself or herself from any discussion, decision, debate or vote on any matter "to avoid a conflict of interest". As subsection 25(1) states in part: "... the reporting public office holder shall, within 60 days after the day on which the recusal took place, make a public declaration of the recusal that provides sufficient detail to identify the conflict of interest that was avoided."
6. The Commissioner, in issuing her order of July 12, 2016, acted outside of the scope of her jurisdiction pursuant to s. 87 of the *Parliament of Canada Act*;
7. The Commissioner's decision violates section s. 21 of the *Conflict of Interest Act* ("the *Act*") relating to mandatory recusal of a public office holder to avoid a conflict of interest, and subsection 25(1) of the *Act* relating to mandatory public disclosure of the details of each recusal;
8. The Commissioner has clear jurisdiction to order recusal of a public office holder in respect of conflict of interest matters pursuant to sections 29 and 30 of the *Act*;
9. The Commissioner's July 12, 2016 decision is unlawful and exceeds her jurisdiction.
10. 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 July 12, 2016 order, and all similar orders by the Commissioner, are unlawful and exceed her jurisdiction;
11. *Parliament of Canada Act*, R.S.C., 1985, c. P-1;
12. *Conflict of Interest Act*, S.C. 2006, c. 9, s. 2;

13. *Federal Courts Act*, R.S.C., 1985, c. F-7;
14. Section 66 of the *Conflict of Interest Act*;
15. Section 28(1)(b.1) of the *Federal Courts Act*;
16. *Federal Court Rules*, 1998, SORJ98-106;
17. Such further and other grounds as counsel may advise and this Honorable 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. Such further material as counsel may advise and this Honorable Court may permit.

July 14, 2016



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Solicitor for the Applicant, Democracy  
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