

Court File No.: T-1000-17



FEDERAL COURT

DEMOCRACY WATCH

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

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 Ottawa.

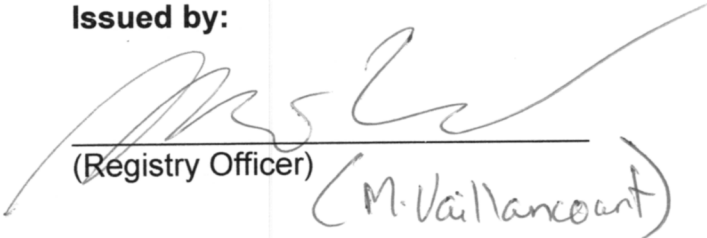
IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor, 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 7, 2017

Issued by:


(Registry Officer)

90 rue Sparks Street
Ottawa, Ontario
K1A 0H9

Address of local office:

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

Nathalie G Drouin
Deputy Attorney General of Canada
Office of the Deputy Attorney General of Canada
284 Wellington Street
Ottawa, Ontario
K1A 0H8

APPLICATION

THIS IS AN APPLICATION FOR JUDICIAL REVIEW in respect of a decision of the Governor General in Council (the "GIC"), Order in Council 2017-0699, dated June 7, 2017. By this decision, the GIC appointed Mary Dawson to be Conflict of Interest and Ethics Commissioner on an interim basis, to hold office during good behaviour, for a term of six months, effective July 9, 2017, pursuant to subsection 82(2) of the *Parliament of Canada Act*, RSC 1985, c.P-1 (the "Act").

Subsection 82(2) provides that:

In the event of the absence or incapacity of the Commissioner, or if that 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, and that person shall, while holding office, be paid the salary or other remuneration and expenses that may be fixed by the Governor in Council.

Ms Dawson was the first person appointed to hold the office of Conflict of Interest and Ethics Commissioner ("Commissioner") since its creation in 2007. Ms Dawson was appointed for a seven year term under subsection 81(1) (OIC 2007-1112), and reappointed for an additional two year term in 2014 under subsection 81(3) (OIC 2014-0694). Ms Dawson was subsequently appointed on an interim basis for two successive six-month terms under subsection 82(2) in June (OIC 2016-0661) and again in December 2016 (OIC 2016-1148).

The decision at issue in this application, OIC 2017-0699, was the third successive six-month "interim appointment" of Ms Dawson under subsection 82(2) of the *Act*. The Applicant seeks an order quashing the appointment because it contravenes subsection 82(2) by exceeding the six-month period for interim appointments, and circumvents section 81 by using successive interim appointments to effectively make a subsection 81(3) reappointment, without undertaking the consultative process required under subsection 81(1).

Sections 81 and 82 of the *Parliament of Canada Act* embody Parliament's intent to ensure the Commissioner's independence by providing an appointment process that includes consultation with all parties in the House of Commons and affords security of tenure through fixed terms of up to seven years. Successive interim appointments are both contrary to the letter of subsection 82(2) and the scheme of the *Act* more broadly.

The Applicant requests that the GIC's decision be set aside, with an order directing the GIC to appoint a new Commissioner on an interim basis for up to six months, pending the appointment of a new Commissioner pursuant to subsection 81(1) of the *Act*.

THE APPLICANT MAKES APPLICATION FOR:

1. An Order setting aside the GIC's decision of June 7, 2017 (Order in Council 2017-0699);
2. An Order directing the GIC to appoint a new Commissioner on an interim basis for up to six months, pending the appointment of a new Commissioner pursuant to subsection 81(1) of the *Act*;
3. Costs; and
4. Such further and other relief as counsel may request and this Honourable Court deems just.

THE GROUNDS FOR THE APPLICATION ARE:

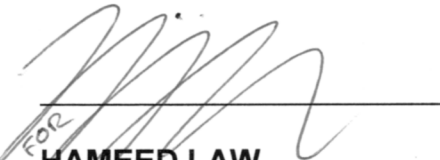
1. The appointment by the GIC of Mary Dawson as interim Commissioner for a third successive six-month term violates subsection 82(2) of the *Act*, which is engaged only in the event of the absence or incapacity of the Commissioner or if that office is vacant, and which limits such interim appointments to a single six-month term;
2. The appointment by the GIC of Mary Dawson as interim Commissioner for a third successive six-month term violates the scheme of the *Act*, sections 81 and 82 of which are designed to ensure the Commissioner's independence by providing an appointment process that includes consultation with all parties in the House of Commons and affording security of tenure through fixed terms of up to seven years;
3. The GIC erred in law by this interpretation of the *Act* and by failing to recognize principles of natural justice and standards established by Parliament for the independence of the Commissioner's office;
4. This Court has jurisdiction to intervene and grant relief on this application, based on the ground that the GIC's June 7, 2017 decision contravenes sections 81 and 82 of the *Parliament of Canada Act* and principles of natural justice;
5. The Applicant has standing to bring the within application as a public interest litigant, having a real stake in the outcome of the application and the issues it raises, and a long and established record of advocacy on behalf of its members and the Canadian public on issues of ethics, transparency, and accountability of government institutions;
6. *Parliament of Canada Act*, RSC, 1985, c. P-1;
7. *Conflict of Interest Act*, SC 2006, c. 9, s. 2;
8. *Federal Courts Act*, RSC, 1985, c. F-7;
9. *Federal Courts Rules*, SOR/98-106;
10. *Open and Accountable Government 2015*; and
11. 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. Order in Council 2017-0699 (dated June 7, 2017); and
3. Such further material as counsel may advise and this Honourable Court may permit.

DEMOCRACY WATCH REQUESTS, pursuant to Rule 317, the Attorney General of Canada to send a certified copy of all documents related to the GIC's June 7, 2017 decision, OIC 2017-0699.

July 7, 2017


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