

**APPENDIX OF FORMS  
FORM 16D**

**NOTICE OF APPLICATION**

IN THE COURT OF QUEEN'S BENCH

No.: \_\_\_\_\_ Fredericton

Between:  
DEMOCRACY WATCH

-and-

**PREMIER OF NEW BRUNSWICK,  
and THE ATTORNEY GENERAL OF NEW BRUNSWICK  
REPRESENTING HER MAJESTY THE QUEEN IN RIGHT OF  
THE PROVINCE OF NEW BRUNSWICK  
and LIEUTENANT GOVERNOR OF NEW BRUNSWICK**

**Applicant**

**Respondents**

**NOTICE OF APPLICATION  
(FORM 16D)**

TO the above-named respondents

LEGAL PROCEEDINGS HAVE BEEN COMMENCED BY FILING THIS NOTICE OF APPLICATION.

The applicant will make an application before the Court at FREDERICTON, on the ..... day of ..... , 2020 . at ..... a.m. (or p.m.) for an order as set out hereunder.

If you wish to oppose this application you must appear at the hearing of the application at the place, date and time stated, either in person or by a New Brunswick lawyer acting on your behalf.

If you intend to appear on the hearing of the application and wish to present to the Court at that time affidavit or other documentary evidence to support your position, you must serve a copy of such evidence on the applicant or his lawyer and, with proof of such service, file it in this Court Office prior to the hearing of the application.

If you fail to appear on the hearing of the application  
**AN ORDER WHICH MAY AFFECT YOU MAY BE MADE IN YOUR ABSENCE.**

You are advised that:

- (a) you are entitled to issue documents and present evidence in the proceeding in English or French or both;

**FORMULAIRE  
FORMULE 16D**

**AVIS DE REQUÊTE**

(Cour; N° du dossier; Intitulé de l'instance)

**AVIS DE REQUÊTE  
(FORMULE 16D)**

DESTINATAIRE: (l'intimé susmentionné ou autre)

PAR LE DÉPÔT DU PRÉSENT AVIS DE REQUÊTE, UNE POURSUITE JUDICIAIRE A ÉTÉ ENGAGÉE.

Le requérant présentera une requête à la Cour à ..... (lieu précis)....., le 19 ..... à ..... h ..... en vue d'obtenir l'ordonnance décrite ci-dessous.

Si vous désirez contester cette requête, vous devrez comparaître à l'audition de la requête aux lieu, date et heure indiqués, soit en personne ou par l'intermédiaire d'un avocat du Nouveau-Brunswick chargé de vous représenter.

Si vous prévoyez comparaître à l'audition de la requête et désirez présenter à la Cour un affidavit ou une autre preuve littérale en votre faveur, vous devrez signifier copie de cette preuve au requérant ou à son avocat et la déposer, avec une preuve de sa signification, au greffe de cette Cour avant l'audition de la requête.

Si vous ne comparez pas à l'audition de la requête, UNE ORDONNANCE POUVANT VOUS CONCERNER POURRA ÊTRE RENDUE EN VOTRE ABSENCE.

Sachez que:

- a) vous avez le droit dans la présente instance, d'émettre des documents et de présenter votre preuve en français, en anglais ou dans les deux langues;
- b) le requérant a l'intention d'utiliser la langue ..... ; et
- c) si vous avez besoin des services d'un interprète à l'audience, vous devez en aviser le greffier au moins 7 jours avant l'audience.

- (b) the applicant intends to proceed in the ENGLISH language; and
- (c) if you require the services of an interpreter at the hearing you must advise the clerk at least 7 days before the hearing.

CET AVIS est signé et scellé au nom de la Cour du Banc de la Reine par ....., greffier de la Cour, à ....., ce ..... 19. ....

.....  
(greffier)

THIS NOTICE is signed and sealed for the Court of Queen's Bench by ....., Clerk of the Court at ....., on the ..... day of ....., 2020.

.....  
(clerk)

Court  
Seal

Sceau de  
la Cour

.....  
(address of court office)

.....  
(adresse du greffe)

## APPLICATION

### PART 1: Orders Sought

On the hearing of this application, the Applicant intends to apply for an order declaring that:

1. The Premier of New Brunswick's action advising the Lieutenant Governor of New Brunswick ("Lieutenant Governor") to dissolve Parliament on August 17, 2020 and to hold a general election on September 14, 2020 contravened subsection 3(4) of the *Legislative Assembly Act*, (RSNB 2014, c 116) (the "*Act*");
2. The Lieutenant Governor improperly exercised her discretion under subsections 3(2) and 3(3) of the *Act* by dissolving Parliament on August 17, 2020;
3. The Lieutenant Governor in Council improperly exercised her power under subsection 13(1) of the *Elections Act* (RSNB 1973, c E-3) on August 17, 2020 by issuing an Order in Council directing the issuing of writs and fixing various dates for a general election including the ordinary polling day of September 14, 2020.

And furthermore:

4. The Applicant does not ask for costs and asks that no costs be ordered against it;
5. Such further and other relief as this Honourable Court may deem just.

## REQUÊTE

À l'audition de la présente requête, le requérant a l'intention de demander qu'il soit ordonné que ..... (indiquer l'ordonnance demandée) .....

Énoncer ensuite les éléments suivants dans des paragraphes numérotés et distincts:

1. La qualité de toutes les personnes qui sont parties à l'instance. Le lieu de résidence du requérant.
2. Les motifs à discuter et les renvois aux dispositions législatives ou règles qui seront invoquées.
3. Une liste des preuves littérales qui seront utilisées lors de l'audition de la requête.

FAIT à ..... le ..... 19. ....

.....  
Avocat du requérant (ou requérant, s'il n'est pas représenté par un avocat)



## **PART 2: Facts**

### ***The Applicant***

6. The Applicant Democracy Watch is a national non-profit, non-partisan organization that was founded in September 1993 and advocated for democratic reform, government accountability, and corporate responsibility. Democracy Watch is duly incorporated under the Laws of Canada and is based in Ottawa, Canada.

### ***Provincial Elections in New Brunswick***

7. Prior to 2001, then section 2 of the *Act* provided that in the absence of dissolution of the Legislative Assembly by the Lieutenant Governor, members of the Legislative Assembly would hold their seats for a maximum of five years.
8. As a consequence, provincial elections in New Brunswick could occur at any time, on the Premier's advice and at the Lieutenant Governor's discretion, as long as the five-year maximum window between elections was not exceeded.
9. In 2007, s. 2 of the *Act* was amended by Bill 75 "*An Act to Amend the Legislative Assembly Act*", such that a fixed election date was established, with a general voting day to occur on September 27, 2010 and on the fourth Monday in September every four years thereafter.
10. The purpose of Bill 75 was to eliminate the Premier's discretion to accelerate or delay an election to further a political strategy, with the particular goal of furthering the certainty and predictability in the conduct of public affairs and improving public confidence in the process.
11. Since the introduction of the fixed election provisions in the *Act* in 2007, every provincial election in New Brunswick has been held on the dates fixed by the *Act*.
12. The last provincial election in New Brunswick occurred on September 24, 2018. In this election, no party won a majority of seats. After the election, the incumbent Liberal government was defeated on a non-confidence vote. Subsequently, the Progressive Conservative party ("PC") formed a minority government and on November 9, 2018 PC leader Blaine Higgs was sworn in as Premier with a minority government.
13. In the fall of 2017, section 3 (formerly section 3) of the *Act* was further amended when the PC government introduced Bill 62. As a result of this amendment, the fixed election date in subsection 3(4) of the *Act* was moved from a four-year fixed cycle with the election falling on the fourth Monday in September to a four-year fixed cycle with the election falling on the fourth Monday in October.
14. Pursuant to the election dates currently fixed by subsection 3(4) of the *Act*, the next provincial election in New Brunswick had been scheduled to occur on the fourth Monday of October in 2022.

### ***The 2020 Snap Election Call***

15. On August 17, 2020, after receiving advice from the Premier to dissolve the legislature and to cause the writs to be issued for an election, the Lieutenant Governor issued a Proclamation dissolving the Legislative Assembly.
16. Also on August 17, 2020, the Lieutenant Governor approved Order in Council No. 187 (the "**OIC**"), in which the Lieutenant Governor in Council, on the recommendation of the Premier and the Executive Council,

ordered a general election to be held in all electoral districts for the election of members to serve in the Legislative Assembly in New Brunswick.

17. At the time, the Premier held the confidence of the Legislature. The only rational inference is that the timing of this election is an opportunity for political gain.
18. The ordinary voting day for the provincial election was September 14, 2020.

### **PART 3: Legal Basis**

19. Subsection 3(3) of the *Legislative Assembly Act* states that the Lieutenant Governor has the power to dissolve the Legislative Assembly at the Lieutenant Governor's discretion.
20. By constitutional convention, the Lieutenant Governor will only dissolve the Legislative Assembly and cause a general election on the advice of the Premier. The Lieutenant Governor may decline to follow the Premier's advice, but she will not otherwise dissolve the Legislative Assembly.
21. The "confidence convention" establishes that the Legislative Assembly may be dissolved if a vote of non-confidence in the presiding government of New Brunswick has occurred in the Legislative Assembly.
22. Subsection 3(3) is limited by section 3(4) of the *Act*, which provides that a general voting day must occur on the third Monday in October in the fourth calendar year following the most recently held general election.
23. The provision of fixed election dates in subsection 3(4) of the *Act* reflects the legislative intent that provincial elections will be held on a fixed date every fourth year. This provision increases certainty and predictability in the electoral process and prevents governing parties from calling elections purely for reasons of political strategy.
24. Since 2007, every New Brunswick provincial election has been held as prescribed by the *Act*, creating constitutional conventions that fixed elections will be held on the fixed date, and that the Legislative Assembly will not be dissolved by the Lieutenant Governor and writs will not be ordered by the Lieutenant-Governor in Council for a provincial election unless the government has lost the confidence of the Legislative Assembly.
25. During that four-year period, subsection 3(4) of the *Act*, informed by these constitutional conventions, prohibits the Premier from advising the Lieutenant Governor to dissolve – and limits the Lieutenant Governor's discretion to dissolve – the Legislative Assembly, unless the government loses the confidence of the legislature.
26. Also during that four-year period, subsection 3(4) of the *Act*, together with subsection 24(1) of the *Elections Act* and informed by the constitutional conventions, prohibits the Premier from advising the Lieutenant-Governor in Council to order – and prevents the Lieutenant-Governor in Council from ordering – a general election to be held, unless the government loses the confidence of the legislature.
27. The dissolution of the Legislative Assembly and the issuing of the writs and election-related dates, including an ordinary voting day of September 14, 2020, occurred at a time when the government held the confidence of the Legislature. These actions, advised by the Premier and the Executive Council, and undertaken by the Lieutenant Governor and the Lieutenant-Governor in Council, were contrary to the *Legislative Assembly Act*.



28. The Applicant relies on the following:

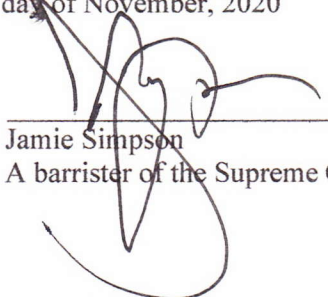
- (a) *Constitution Act, 1867*
- (b) *Legislative Assembly Act* (R.S.N.B. 2014, c.116);
- (c) *Elections Act* (R.S.N.B. 1973, c. E-3);
- (d) Rule 69 of the Court of Queen's Bench Civil Rules;
- (e) Rule 38 of the Court of Queen's Bench Civil Rules; and
- (f) The inherent jurisdiction of this Court.

**PART 4: Material to be relied on**

29. The Affidavit of Duff Conacher, made November 12, 2020; and

30. Such further affidavits and other documents as counsel for the Applicant may advise and this Court may permit.

DATED at Halifax, Nova Scotia, this 12th  
day of November, 2020



\_\_\_\_\_  
Jamie Simpson  
A barrister of the Supreme Court of Nova Scotia

Form / Formule 16D

Name of lawyer for applicant: Jamie Simpson

Name of firm (if applicable): Juniper Law

Business address: 3441 Purcells Cove Rd, Halifax,  
Nova Scotia, B3V 1G3

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Email: jamie@juniperlaw.ca

Address for service within New Brunswick:

Jamie Simpson C/o 173 Water St., St. Andrews, NB  
E5B 1A9

82-93; 85-5; 86-87; 87-111

Nom de l'avocat du requérant: .....

Raison sociale (s'il y a lieu): .....

Adresse professionnelle: .....

ou, si le demandeur n'est pas représenté par un avocat:

Nom du requérant: .....

Adresse aux fins de signification au Nouveau-  
Brunswick: .....

82-93; 85-5; 86-87; 87-111