

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DEMOCRACY WATCH and WAYNE CROOKES

PETITIONERS

AND:

THE LIEUTENANT GOVERNOR OF BRITISH COLUMBIA,
THE LIEUTENANT GOVERNOR IN COUNCIL OF BRITISH COLUMBIA,
THE PREMIER OF BRITISH COLUMBIA,
THE ATTORNEY GENERAL OF BRITISH COLUMBIA, and
HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH
COLUMBIA

RESPONDENTS

PETITION TO THE COURT

This proceeding has been started by the petitioner(s) for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner(s)
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner(s),

- (a) if you reside anywhere within Canada, within 21 days after the date on which a copy of the filed petition was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed petition was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed petition was served on you, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is:	800 Smithe Street Vancouver, BC V6Z 2E1
(2)	The ADDRESS FOR SERVICE of the petitioner(s) is:	Osler, Hoskin & Harcourt LLP 1055 West Hastings Street, Suite 1700, Vancouver, BC V6E 2E9 Attention: Emily MacKinnon
	Fax number address for service (if any) of the petitioner(s):	
	E-mail address for service (if any) of the petitioner(s):	emackinnon@osler.com
(3)	The name and office address of the petitioner's(s') lawyer is:	Osler, Hoskin & Harcourt LLP 1055 West Hastings Street, Suite 1700, Vancouver, BC V6E 2E9 Attention: Emily MacKinnon

CLAIM OF THE PETITIONERS

Part 1: ORDERS SOUGHT

The Petitioners apply for an order and declaration that:

1. The Premier of British Columbia (the “**Premier**”) contravened section 23 of the *Constitution Act*, R.S.B.C. 1995, c. 66 by advising the Lieutenant Governor of British

Columbia (“**Lieutenant Governor**”) to dissolve the Legislative Assembly on September 21, 2020 and to hold a general election on October 24, 2020;

2. The Lieutenant Governor improperly exercised her discretion under section 23 of the *Constitution Act* by dissolving the Legislative Assembly on September 21, 2020;
3. The Lieutenant Governor in Council improperly exercised her power under subsection 24(1) of the *Election Act*, R.S.B.C. 1996, c. 106 to issue an order causing a general election to be held on October 24, 2020;
4. The Petitioners do not ask for costs and ask that no costs be ordered against them; and
5. Such further and other relief as this Honourable Court may deem just.

Part 2: FACTUAL BASIS

The Parties

1. The Petitioner Democracy Watch is a national non-profit, non-partisan organization that was founded in September 1993 and advocates for democratic reform, government accountability, and corporate responsibility. Democracy Watch is duly incorporated under the laws of Canada and has a registered office at 1 Nicholas Street, Suite 1510 in Ottawa, Ontario.
2. The Petitioner Wayne Myron Crookes is a businessman and resides at #1201 – 2476 York Avenue in Vancouver, British Columbia.

Provincial Elections in British Columbia

3. Prior to 2001, section 23 of the *Constitution 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.
4. As a consequence, provincial elections in British Columbia could occur at any time, on the Premier’s advice and at the Lieutenant Governor’s discretion, as long as the 5-year maximum window between elections was not exceeded.

5. In 2001, section 23 of the *Constitution Act* was amended by Bill 7 “*Constitution (Fixed Election Dates) Amendment Act, 2001*”, such that a fixed election date was established, with a general voting day to occur on May 17, 2005 and on the second Tuesday in May every four years thereafter.
6. The purpose of Bill 7 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.
7. Since the enactment of the fixed election provisions in the *Constitution Act* in 2001, every provincial election in BC has been held on the dates fixed by the *Constitution Act*.
8. The last provincial election in BC occurred on May 9, 2017. In this election, no party won a majority of seats, with the result that the Green Party caucus agreed to provide confidence in a BC New Democrat (“**NDP**”) government.
9. In the fall of 2017, section 23 of the *Constitution Act* was further amended by Bill 5. As a result of this amendment, the fixed election date in section 23 of the *Constitution Act* was moved from a four-year fixed cycle with the election falling on the second Tuesday in May to a four-year fixed cycle with the election falling on the third Saturday in October.
10. The purpose of Bill 5 was to increase transparency by providing for the passage of a budget prior to an election.
11. Pursuant to the election dates currently fixed by section 23 of the *Constitution Act*, the next provincial election in BC is scheduled to occur on the third Saturday of October in 2021.

The 2020 Snap Election Call

12. On September 21, 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.
13. Also on September 21, 2020, the Lieutenant Governor approved Order in Council No. 567 (the “**OIC**”), in which the Lieutenant Governor in Council, on the recommendation of the

Premier and the Attorney General, ordered a general election to be held in all electoral districts for the election of members to serve in the Legislative Assembly in British Columbia.

14. 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.
15. The general voting day for the 42nd provincial election is October 24, 2020.

British Columbia's COVID-19 State of Emergency

16. On March 17, 2020, the Provincial Health Officer provided notice that the COVID-19 pandemic constitutes a regional event that could have a serious impact on public health, pursuant to the *Public Health Act*, S.B.C. 2008, c. 28, sections 51 and 52(2).
17. Since March 17, 2020, the Provincial Health Officer has made numerous public health orders and provided extensive guidance, including limiting public gatherings, asking individuals to remain physically distant, and to stay home if they feel ill.
18. On March 18, 2020, in Ministerial Order No. M073, the Minister of Public Safety and Solicitor General declared a state of emergency throughout the Province, pursuant to subsection 9(1) of the *Emergency Program Act*, R.S.B.C. 1996, c. 111.
19. Since that time, that provincial state of emergency has been continuously extended in two-week increments, as required by the *Emergency Program Act*. The most recent extension will expire on October 27, 2020.
20. On September 21, 2020, to address the numerous challenges of holding an election during the COVID-19 pandemic, the Chief Electoral Officer issued 16 emergency orders pursuant to the *Election Act*, R.S.B.C. 1996, c. 106, section 280. These orders modify numerous statutory requirements for the conduct of elections.

Part 3: LEGAL BASIS

1. Subsection 23(1) of the *Constitution Act* states that the Lieutenant Governor may prorogue or dissolve the Legislative Assembly when the Lieutenant Governor sees fit.

2. 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.
3. The "confidence convention" also establishes that the Legislative Assembly may be dissolved if a vote of non-confidence in the presiding government of BC has occurred in the Legislative Assembly.
4. Subsection 23(1) is limited by subsection 23(2) of the *Constitution Act*, which provides that a general voting day must occur on the third Saturday in October in the fourth calendar year following the most recently held general election.
5. The provision of fixed election dates in subsection 23(2) of the *Constitution Act* reflects the legislative intent that provincial elections will be held on a fixed date every fourth year, unless the government loses the confidence of the legislature. This provision increases certainty and predictability in the electoral process and prevents governing parties from calling elections purely for reasons of political strategy.
6. Since 2001, every provincial election has been held as prescribed by the *Constitution Act*, establishing a constitutional convention that fixed elections will be held on the fixed date every four years, unless the government has lost the confidence of the house.
7. During that four-year period, subsection 23(2) of the *Constitution Act*, informed by the 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.
8. Also during that four-year period, subsection 23(2) of the *Constitution Act*, together with subsection 24(1) of the *Election 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.

9. The *Constitution Act* is the constitution of British Columbia and, as a result, the provisions of that *Act* have precedence over the provisions of any other provincial statute.
10. The dissolution of the Legislative Assembly and the calling of an election for October 24, 2020 occurred at a time when the government held the confidence of the legislature. These actions, advised by the Premier and the Attorney General, and undertaken by the Lieutenant Governor and the Lieutenant Governor in Council, were contrary to the *Constitution Act*.
11. The Petitioner relies on the following:
 - (a) *Constitution Act, 1867*;
 - (b) *Constitution Act, R.S.B.C. 1996, c. 66*;
 - (c) *Election Act, R.S.B.C. 1996, c. 106*;
 - (d) Rules 2-1(2), 14-1, and 16-1 of the Supreme Court Civil Rules; and
 - (e) The inherent jurisdiction of this Court.

Part 4: MATERIAL TO BE RELIED ON

1. The Affidavit #1 of Wayne Crookes, made October 23, 2020;
2. such further affidavits and other documents as counsel for the Petitioner may advise and this Court may permit.

The petitioner estimates that the hearing of the petition will take two days.

Dated: October 23, 2020

Lawyer for the Petitioner

Emily MacKinnon

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this Petition

with the following variations and additional terms:

Date: _____

Signature of
 Judge Master