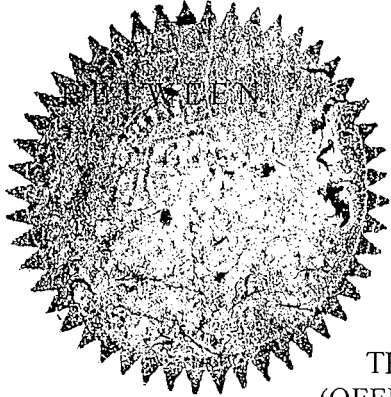


Court File No. 05cv. 297209  
PD3

ONTARIO  
SUPERIOR COURT OF JUSTICE



DEMOCRACY WATCH

Applicant

- and -

THE ATTORNEY GENERAL OF CANADA  
(OFFICE OF THE REGISTRAR FOR LOBBYISTS)  
and THE ETHICS COMMISSIONER

Respondents

APPLICATION UNDER Rule 14 of the *Rules of Civil Procedure*.

**NOTICE OF APPLICATION**

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on December 23, 2005 at 10:00 AM at 393 University Avenue, Toronto, Ontario

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 an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

*Issued* Date September 20, 2005

Issued by

  
Local registrar

Address of court office 393 University Ave, 10<sup>th</sup> Flr  
Toronto, Ontario  
MSG-1E6

**TO: The Attorney General of Canada**  
Department of Justice  
Ontario Regional Office  
130 King Street West  
Suite 3400, Box 36  
Toronto, ON  
M5X 1K6



**AND TO: Office of the Ethics Commissioner**  
Parliament of Canada  
P.O. Box 16,  
Centre Block  
22nd floor, 66 Slater  
Ottawa, Ontario  
K1A 0A6

## APPLICATION

1. The applicant makes application for:
  - (a) A declaration that the institutional scheme under the *Lobbyists Registration Act, R.S. 1985, c. 44, as am.* (“LRA”), insofar as it permits or requires the same person to (i) carry out the responsibility of investigating and reporting, directly or indirectly, to Parliament on alleged violations of the Lobbyists’ Code of Conduct (“Lobbyists’ Code”) and enforce other provisions of the LRA, and (ii) act as a member of a government ministry, or be under the control of a public office holder (as defined in the LRA), which might be subject to investigation under the LRA, raises a reasonable apprehension of bias and thereby contravenes s. 2(e) of the *Canadian Bill of Rights*, and common law requirements;
  - (b) A declaration that the Registrar of Lobbyists lacks independence and suffers from structural bias;
  - (c) A declaration that the institutional scheme under the *Parliament of Canada Act, R.S. 1985, c. P-1* insofar as it permits or requires the same person to (i) carry out the responsibility of investigating and reporting, directly or indirectly, to Parliament on alleged violations of the *Public Office Holders’ Code of Conduct* (“Public Office Holders’ Code”) and the *MP’s Code of Conduct* (“MPs’ Code”), and (ii) provide confidential advice to Public Office Holders and MPs with respect to the same issues which are or may be investigated under these Codes, raises a reasonable apprehension of bias and thereby contravenes s. 2(e) of the *Canadian Bill of Rights*, and common law requirements;
  - (d) A declaration that the Ethics Commissioner suffers from specific and structural bias;
  - (e) Its costs of this application on a substantial indemnity basis, inclusive of G.S.T.; and

(f) Such further and other relief as to this Honourable Court seems just.

2. The grounds for the application are:

- (a) Michael Nelson (“Nelson”), in his legal position of Registrar of Lobbyists, lacks, or appears to lack, sufficient institutional independence and impartiality;
- (b) Nelson is both the Registrar of Lobbyists and an Assistant Deputy Minister (“ADM”) of the Department of Industry;
- (c) The Registrar of Lobbyists is responsible for establishing and maintaining the lobbyists’ registry with information on all registered lobbyists and their activities, overseeing compliance with the Lobbyists’ Code, investigating alleged breaches of the Lobbyists’ Code, and preparing a report of such investigations to be tabled by the Registrar General before Parliament;
- (d) The Registrar of Lobbyists is also responsible for the front-line enforcement of the LRA, and is required to notify police or other enforcement agencies if the Registrar reasonably believes that a violation of any law has been committed while the Registrar is conducting an investigation into an allegation that the Lobbyists’ Code has been violated;
- (e) The Ministry most frequently lobbied is the Ministry of Industry, in which the Lobbyists Registration Branch is situated, and of which the current Registrar of Lobbyists is an integral part, both as Registrar, and as ADM;
- (f) Nelson is subject to the direction and control of the Minister of Industry. In his position of Registrar of Lobbyists, he serve at pleasure, pursuant to an appointment by the Minister of Industry;
- (g) The budget for the Lobbyists Branch, out of which the Registrar of Lobbyists carries on his duties, is controlled by the Minister of Industry: thus, the Registrar lacks financial independence from the Ministry;

- (h) The staff of the Lobbyists Branch is also in effect subject to the approval of the Minister of Industry;
  - (i) These characteristics of Nelson's situation raise a reasonable apprehension of bias. They make it appear that Nelson is incapable of rendering a fair and impartial decision under the Lobbyists' Code;
  - (j) Dr. Bernard Shapiro ("Shapiro"), in his legal position of Ethics Commissioner, is or appears to be biased against maintaining a reasonable standard of enforcement of the Public Office Holders' Code and the MPs' Code;
  - (k) The Ethics Commissioner is responsible for investigating complaints relating to the Public Office Holders' Code and the MPs' Code;
  - (l) The Ethics Commissioner is also responsible for providing confidential advice to MPs and public office holders in respect of ethical issues, should such advice be requested;
  - (m) It is impossible for the Ethics Commissioner to properly discharge his obligations to fully and fairly investigate matters in relation to which he has also provided confidential advice;
  - (n) Over the last year, Shapiro has repeatedly breached the Public Office Holders' Code himself, and through these and other actions has demonstrated his unwillingness to maintain the ethical responsibilities given to him as Ethics Commissioner;
  - (o) Such further and other grounds as counsel may advise and this Honourable Court may permit.
3. The following documentary evidence will be used at the hearing of the application:
- (a) the Affidavit of Duff Conacher, with exhibits; and,

(b) such further material as counsel may advise and this Honourable Court may permit.

Date: September 20, 2005

**Doane Phillips Young LLP**  
53 Jarvis Street, Suite 300  
Toronto ON M5C 2H2

**Martin J. Doane LSUC#: 31819C**  
**Laura C. Young LSUC#: 39337V**  
Tel: 416.366.3777  
Fax: 416.366.9197

Solicitors for the Applicant

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**NOTICE OF APPLICATION**

**Doane Phillips Young LLP**  
53 Jarvis Street, Suite 300  
Toronto ON M5C 2H2

**Martin J. Doane LSUC#: 31819C**  
**Laura C. Young LSUC#: 39337V**  
Tel: 416.366.4298  
Fax: 416.366.9197

Solicitors for the Applicant