

FEDERAL COURT

BETWEEN

DUFF CONACHER and DEMOCRACY WATCH

Applicants

- and -

THE PRIME MINISTER OF CANADA,

THE GOVERNOR IN COUNCIL OF CANADA and

THE GOVERNOR GENERAL OF CANADA

Respondents



NOTICE OF APPLICATION FOR JUDICIAL REVIEW

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the applicant appears on the following pages.

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 Court Rules*, 1998 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 Court Rules*, 1998, 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 NOTICE TO YOU.**

Date: September 26, 2008

Issued by:

A J Bauch

Federal Court of Canada
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TO:

Prime Minister of Canada Stephen Harper
Office of the Prime Minister
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Governor General of Canada Michaëlle Jean
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APPLICATION

THIS IS AN APPLICATION FOR JUDICIAL REVIEW in respect of the action of Prime Minister of Canada Stephen Harper of advising the Governor General of Canada to dissolve Parliament on September 7, 2008, and the decision of the Governor General of Canada to dissolve Parliament on September 7, 2008 and order the Writs of Election to set forth October 14, 2008 as the polling day, and the action of the Governor-in-Council of Canada of issuing a proclamation of a general election to be held on October 14, 2008.

DUFF CONACHER AND DEMOCRACY WATCH MAKE APPLICATION FOR:

1. An order quashing the action by Prime Minister of Canada Stephen Harper (“Prime Minister”) of advising the Governor General of Canada to dissolve Parliament on September 7, 2008.
2. An order quashing the decision of the Governor General of Canada to dissolve Parliament on September 7, 2008 and order the Writs of Election to set forth October 14, 2008 as the polling day.
3. An order quashing the action of the Governor-in-Council of Canada of issuing a proclamation of a general election to be held on October 14, 2008.
4. In the alternative, a declaration that the action of the Prime Minister of Canada Stephen Harper (“Prime Minister”) advising the Governor General of Canada (“Governor General”) to dissolve Parliament on September 7, 2008 contravened section 56.1 of the *Canada Elections Act* (the “Act”), and section 3 of the *Canadian Charter of Rights and Freedoms* (the “Charter”).
5. Also in the alternative, a declaration that, given the illegality of the Prime Minister’s advice, the Governor General improperly exercised her discretion to dissolve Parliament.
6. Also in the alternative, a declaration that given the illegality of the Prime Minister’s advice to the Governor General, and the subsequent improper dissolution of Parliament by the Governor General, the Governor-in-Council’s proclamation of a general election was in contravention of section 56.1 of the *Act* and section 3 of the *Charter*.
7. Their costs of this application on a substantial indemnity basis; and
8. Such further and other relief as to this Honourable Court seems just.

THE GROUNDS FOR THE APPLICATION ARE AS FOLLOWS:

BACKGROUND

1. The preamble to the *Constitution* provides that “the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom.” This latter imports into Canada the “confidence convention.”
2. The “confidence convention” establishes that Parliament shall be dissolved if a vote of non-confidence in the Government of Canada has occurred in the House of Commons.

3. Section 56.1 of the *Act* was proposed by the current Government in in May 2006 as Bill C-16, and came into force on May 3, 2007. Section 56.1 reads:

56.1 (1) Nothing in this section affects the powers of the Governor General, including the power to dissolve Parliament at the Governor General's discretion.

(2) Subject to subsection (1), each general election must be held on the third Monday of October in the fourth calendar year following polling day for the last general election, with the first general election after this section comes into force being held on Monday, October 19, 2009.

4. Given the "confidence convention" and the legislative intent of section 56.1 of fixing the date of elections unless a vote of non-confidence in the Government occurred in the House of Commons, subsection (1) of section 56.1 is to be interpreted as limiting such discretion of the Governor General to dissolve Parliament only to situations following a vote of "non-confidence" in the Government.

5. Thus section 56.1 correspondingly limited the circumstances in which the Prime Minister could advise the Governor General to dissolve Parliament.

6. The dissolution of the thirty-ninth Parliament did not follow a vote of "non-confidence."

7. Therefore the dissolution of the thirty-ninth Parliament and the calling of the election for October 14, 2008 contravenes section 56.1 of the *Act*.

UNFAIRNESS OF ELECTION CALL VIOLATES SECTION 3 OF CHARTER

8. Allowing the Prime Minister discretion as to when to advise the Governor General to dissolve Parliament gives the Prime Minister's political party an unfair advantage in contesting the ensuing election.

9. The unfair advantage enjoyed by the Prime Minister's party for the upcoming election is exacerbated by the fact that his causing the dissolution of Parliament was unexpected because of the understanding that section 56.1 of the *Act* would preclude dissolution in the circumstances.

10. The unfairness of the situation extends to the public, who were given essentially no advance notice of the calling of the election, even though part of the purpose of section 56.1 was to provide such advance notice. As a result, members of the public who intended to be candidates, volunteers and/or voters are hindered in terms of participation in the election.

11. Therefore, even if it is held that the calling of the election of October 14, 2008 does not contravene section 56.1 of the *Act*, the advantage over other federal political parties that the Prime Minister's political party obtained from the calling of the election in the circumstances, and the lack of advance notice to the public that an election was going to be called, contravene the fairness of elections that is required by section 3 of the *Charter*.

LEGISLATION AND RELATED GROUNDS

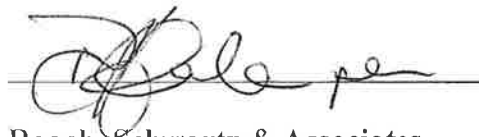
12. *Constitution Act, 1867*;
13. *Canadian Charter of Rights and Freedoms* (1982);
14. *Canada Elections Act*, (2000, c. 9)
15. *Federal Court Act*, R.S.C. 1985, c.F-7, as amended;
16. *Federal Court Rules*, 1998, SORJ98-106; and
17. Such further and other grounds as Democracy Watch may submit and this Honourable Court may accept.

THE APPLICATION WILL BE SUPPORTED BY THE FOLLOWING:

1. The Application Record of Democracy Watch, including the Affidavit of Duff Conacher, to be filed; the Affidavit of Lawrence LeDuc, to be filed; other affidavits to be filed; Government of Canada publications, and; Hansard reports of the debates on Bill C-16.
2. Such further material as counsel may advise and this Honourable Court may permit.

DEMOCRACY WATCH REQUESTS the Prime Minister of Canada, the Governor-in-Council of Canada, and the Governor General of Canada to send a certified copy of all documents relating to their decisions and actions that are not in the possession of Democracy Watch but are in the possession of them, to Democracy Watch's counsel and to the Registry.

September 26, 2008



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Solicitors for the Applicant

Court No.

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