

File Number:

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)**

BETWEEN:

DEMOCRACY WATCH

Applicant

- and -

CONFLICT OF INTEREST AND ETHICS COMMISSIONER

Respondent

**NOTICE OF APPLICATION FOR LEAVE TO APPEAL
pursuant to section 43 of the *Supreme Court Act***

Take notice that the Applicant, Democracy Watch, hereby applies for leave to appeal to the Court, pursuant to section 43 of the *Supreme Court Act*, from the judgment of the Federal Court of Appeal File No. A-174-08 made January 23, 2009;

and further take notice that this application for leave is made on the following grounds:

1. That this first-ever case concerning the actions of the new federal Conflict of Interest and Ethics Commissioner (“Ethics Commissioner”) under the new *Conflict of Interest Act* (“Act”) is of public importance because ensuring ethical government is crucial to having democratic government, and to ensure an ethical federal government the Ethics Commissioner must exercise her full enforcement mandate and powers properly in every case, and this case raises fundamental questions about the scope of the Ethics Commissioner’s jurisdiction and law enforcement mandate under the Act, the interpretation of key provisions that define what is a “conflict of interest” under the Act, and about the proper exercise of the Ethics Commissioner’s powers and discretion within that jurisdiction and under that mandate.
2. That the Federal Court of Appeal erred in law in its January 21, 2009 ruling that the Ethics Commissioner’s January 7, 2008 written decision concerning the November 26, 2007 complaint

filed by the Applicant was not a reviewable decision or matter under the *Federal Courts Act*, and that it is of public importance for the Supreme Court of Canada to consider and rule on the issue of what constitutes a reviewable decision by an administrative tribunal, as it has not considered this issue in the past;

3. That the Federal Court of Appeal erred in law by ruling that the Applicant's request for a review of the constitutionality, under the *Canadian Charter of Rights and Freedoms*, of the system in the *Conflict of Interest Act* for filing complaints with the Ethics Commissioner was improperly included in the Applicant's application for judicial review of the decision by the Ethics Commissioner, and thereby erred by refusing to review and rule on the constitutionality of the complaint filing system (which error directly affected the Federal Court of Appeal's consideration of the judicial reviewability of the Ethics Commissioner's January 7, 2008 decision), and;

4. That the Federal Court of Appeal's ruling thereby sets a precedent that is of public and national importance because it fundamentally undermines the purpose and enforcement of not only the federal *Conflict of Interest Act*, but also similarly structured provincial government ethics laws and enforcement systems whose enforcement officers have similar mandates, powers and discretion as the federal Ethics Commissioner.

Dated at Ottawa, Ontario this 23rd day of March, 2009.

Signed by

Applicant

HAMEED FARROKHZAD ELGAZZAR BROUSSEAU
Barristers & Solicitors
43 Florence Street
Ottawa, ON
K2P 0W6
Yavar Hameed (LSUC #44763A)

Tel: 613-232-2688
Fax: 613-232-2680

Solicitor for the Applicant, Democracy Watch