Court File No. T-2506-14

FEDERAL COURT

BETWEEN:

ANIZ ALANI

Applicant

and

THE PRIME MINISTER OF CANADA,
THE GOVERNOR GENERAL OF CANADA and
THE QUEEN'S PRIVY COUNCIL FOR CANADA

Respondents

APPLICANT'S BOOK OF AUTHORITIES

(Motion for Abridgment of Time and Expedited Hearing)

Aniz Alani, on his own behalf
[redacted]
Tel: 604.600.1156

Applicant

William F. Pentney
Deputy Attorney General of Canada
Per: **Jan Brongers/Oliver Pulleyblank**
Department of Justice
B.C Regional Office
900 – 840 Howe Street
Vancouver, BC V6Z 2S9
Tel: 604.666.0110
Fax: 604.666.1585

Solicitor for the Respondents

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Federal Court Cour fédérale

Date: 20150521

Docket: T-2506-14

Citation: 2015 FC 649

2015 FC 649 (CanLII)

Ottawa, Ontario, May 21, 2015

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

ANIZ ALANI

Applicant

and

THE PRIME MINISTER OF CANADA AND THE GOVERNOR GENERAL OF CANADA

Respondents

ORDER AND REASONS

[1] Last December, Prime Minister Harper is said to have publicly communicated his decision not to advise the Governor General to fill existing vacancies in the Senate. Mr. Alani, a Vancouver lawyer, considers this "decision" illegal. He has applied for judicial review thereof. He seeks various declarations, the main one being that the Prime Minister must call upon the Governor General to appoint his nominees to the Senate within a reasonable time after a vacancy occurs. He does not ask that the Prime Minister be so ordered.

[2] The Deputy Attorney General, on behalf of the Prime Minister and the Governor General, has moved this Court for an order that the application for judicial review be struck at the outset, before it is heard on the merits. He submits it is plain and obvious that the application is bereft of any chance of success.

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[3] For the reasons that follow, I am not persuaded, on the record presently before me, that it is plain and obvious that Mr. Alani has no chance of success. No matter the generality of the language which follows, it is always cushioned by this "plain and obvious" concept.

[4] The respondents' motion references s. 221(1)(*a*) of the *Federal Courts Rules* which provides:

221. (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it	221. (1) À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d'un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas :
(*a*) discloses no reasonable cause of action or defence, as the case may be,	*a*) qu'il ne révèle aucune cause d'action ou de défense valable;

[5] No evidence is to be heard on such a motion. The facts pleaded are taken to be true. The burden falls upon the respondents to persuade me that even if the facts are true, no cause of action is made out.

[6] The leading case on point is the decision in *Hunt v Carey Canada Inc,* [1990] 2 SCR 959. The Supreme Court held that the test to be applied was whether it was "plain and obvious" that

the pleadings disclosed no reasonable claim. "[I]f there is a chance that the plaintiff might succeed, then the plaintiff should not be "driven from the judgment seat"." It is certainly not for the Court, at this stage, to weigh the applicant's chances of success. See also *Attorney General of Canada v Inuit Tapirisat et al*, [1980] 2 SCR 735 and *Operation Dismantle v The Queen*, [1985] 1 SCR 441.

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[7] Also relevant is *Dyson v Attorney-General*, [1911] 1 KB 410 at 419, in which Fletcher Moulton LJ said:

> Differences of law, just as differences of fact, are normally to be decided by trial after hearing in Court, and not to be refused a hearing in Court by an order of the judge in chambers.

I. Issues

[8] The following issues arise:

a. Should the motion to strike be heard now, or at the same time as the application is heard on the merits?

b. Does Mr. Alani have standing?

c. Was there a decision to be judicially reviewed?

d. Is there a constitutional convention by which the timing of Senate appointments is left to the Prime Minister's discretion?

e. If there is such a convention, is it valid if contrary to an imperative requirement of the constitution?

f. Is this a question of statutory interpretation, no more, no less?

g. Is the matter justiciable or better left to the political arena?

h. If justiciable, does the Federal Court have jurisdiction?

i. Costs.

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A. *Should the motion have been postponed?*

[9] Applications to this Court, by way of judicial review or otherwise, are supposed to be summary in nature (*Federal Courts Act*, s 18.4). Interlocutory motions interrupt the flow of proceedings. Nevertheless, there are circumstances, whether under *Federal Courts Rule* 221 or otherwise, in which the Court in control of its own process will not permit an application to run its course (*David Bull Laboratories (Canada) Inc v Pharmacia Inc*, [1995] 1 FC 588 (CA)). More recently, Mr. Justice Stratas speaking for the Court of Appeal referred to *David Bull Laboratories* and said "[t]here must be a "show stopper" or a "knockout punch" – an obvious fatal flaw striking at the root of this Court's power to entertain the application" (*Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013 FCA 250 at para 47).

[10] This application was put under case management and a case management conference has already been held. Serious issues were raised which is why, in my discretion, I decided to hear the motion to strike now.

B. *Does Mr. Alani have standing?*

[11] The respondents have not challenged Mr. Alani's standing as such, at least not at this stage. Section 18.1 of the *Federal Courts Act* provides that: "An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought." Is Mr. Alani directly affected? In any event, as this is a matter which falls within my discretion, I grant him standing on a public interest basis to oppose the motion to have his application struck (*Thorson v Attorney General of Canada,* [1975] 1 SCR 138).

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[12] The respondents submit that Mr. Alani is really referring a point of law to this Court for decision. Only federal boards, commissions and tribunals, and the Attorney General of Canada may refer a question of law to this Court (s. 18.3 of the *Federal Courts Act*). On the other hand, it is open to the Court to grant declaratory relief in accordance with s. 18 of the Act. The application is framed as a judicial review of a decision, not as a reference.

C. *Is there a decision to be judicially reviewed?*

[13] The language of this decision, and the circumstances in which it was allegedly made, are not set out in the pleadings. Was this a statement made in the House of Commons? Or was it a statement made during a media scrum? An off-the-cuff remark may not be a decision at all. Nevertheless, I am required to assume, at this stage, that a decision was made.

[14] For their part, the respondents do not deny at this stage that a decision was made. Perhaps, otherwise, we would be facing the thorny issue as to whether *mandamus* to fulfill a public duty lies.

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[15] As mentioned by Mr. Justice Stratas at paragraph 40 of *JP Morgan*, above, a "concise" statement of the grounds on which judicial review is sought must include the material facts necessary to establish that the Court can and should grant the relief sought. However, it does not include the evidence. As judge, I certainly would have preferred better particulars.

D. *Is there a constitutional convention?*

[16] All agree that a constitutional convention has developed whereby the Governor General will only fill vacancies in the Senate on the advice of the Prime Minister (*Reference re Senate Reform*, [2014] 1 SCR 704 at para 50). The Prime Minister's role may have developed and be evidenced by Minutes of Council going back to 1896. The parties disagree as to whether these Minutes of Council simply constitute recognition of a convention, or whether they show that the Prime Minister's advice is provided pursuant to Crown prerogative.

[17] However, no constitutional convention has been brought to my attention as to the timing of the Prime Minister's recommendations. Certainly, at some stage, senators have to be appointed. If there were to be no quorum, (the quorum being fifteen), Parliament could not function as it is composed of both the House of Commons and the Senate.

E. *Is the Convention Valid?*

[18] The convention is that the Governor General will not do something except on the recommendation of the Prime Minister. In the past, there were conventions that Parliament in Westminster would not amend the *British North America Act* except on Canada's request. These are conventions that provide that something will not be done except in certain circumstances. However, if the Constitution requires something to be done promptly, *i.e.* that Senate vacancies be filled, can the law be flaunted by convention? This goes to the merits of the application and cannot be answered at this time as the full scope of the convention has not been laid out before me.

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F. *Is this a question of statutory interpretation?*

[19] Mr. Alani submits that this is a straightforward case of statutory interpretation. For instance, it had to go all the way to the Judicial Committee of the Privy Council before it was decided that women were "persons" eligible to be appointed to the Senate (*Edwards v Attorney–General for Canada*, [1930] AC 124).

[20] Mr. Alani's case is based upon section 32 of the *Constitution Act, 1867* which provides:

32. When a Vacancy happens in the Senate by Resignation, Death, or otherwise, the Governor General shall by Summons to a fit and qualified Person fill the Vacancy.	32. Quand un siège deviendra vacant au Sénat par démission, décès ou toute autre cause, le gouverneur-général remplira la vacance en adressant un mandat à quelque personne capable et ayant les qualifications voulues.

When shall a vacancy be filled? When it happens, not at the pleasure of the Prime Minister.

[21] Sections 21 and following of the same Act provide that the Senate shall consist of 105 members. Quebec and Ontario shall each be represented by 24, 10 from Nova Scotia, 10 from New Brunswick, 4 from Prince Edward Island, 6 from Manitoba, 6 from British Columbia, 6 from Saskatchewan, 6 from Alberta and 6 from Newfoundland and Labrador. The Yukon Territory, the Northwest Territories and Nunavut shall be entitled to be represented by one senator each. As noted above, the quorum is 15.

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[22] Mr. Alani's other point is that the Senate was not intended to serve as a rest home for old political war horses. Apart from being a sober second chamber, it provides for regional representation. As of 20 March 2015, only 87 of the 105 seats in the Senate were filled, with no one having been appointed since 25 March 2013. Seven provinces are currently shortchanged, with Manitoba only having three of its six allocated seats.

[23] Again, the timing question cannot be answered at this time as we do not know the actual scope of the constitutional convention. The respondents must provide proof thereof as indeed stated at page 888 of *Re: Resolution to Amend the Constitution*, [1981] 1 SCR 753 (the *First Reference*):

> 2. Requirements for establishing a convention
>
> The requirements for establishing a convention bear some resemblance with those which apply to customary law. Precedents and usage are necessary but do not suffice. They must be normative. We adopt the following passage of Sir W. Ivor Jennings, *The Law and the Constitution* (5th ed., 1959), at p. 136:

> We have to ask ourselves three questions: first, what are the precedents; secondly, did the actors in the precedents believe that they were bound by a rule; and thirdly, is there a reason for the rule? A single precedent with a good reason may be enough to establish the rule. A whole string of precedents without such a reason will be of no avail, unless it is perfectly certain that the persons concerned regarded them as bound by it.

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[24] The parties will have an opportunity to provide proof of the existence and scope of any relevant convention at the hearing of the application on the merits.

G. *Is the matter justiciable?*

[25] The respondents submit there is no justiciable issue because the Prime Minister advises on Senate appointments by constitutional convention (true); constitutional conventions are not enforced by the courts (true); constitutional conventions do not become rules of law unless adopted by statute (true); and advice on Senate appointments is not given pursuant to the Crown prerogative (there is some debate on this point). It is further submitted that this Court, as a statutory court created by virtue of s. 101 of the *Constitution Act, 1867*, only has jurisdiction conferred by or under an act of Parliament or Crown prerogative (s. 2 of the *Federal Courts Act*). Consequently, even if the Prime Minister's advice in respect of Senate appointments were justiciable, this Court lacks jurisdiction. Since a constitutional convention does not arise from statute and is not a prerogative of the Crown, the Prime Minister is not a federal board, commission or other tribunal when performing this advice-giving function.

[26] Courts are certainly called upon to determine whether or not a convention exists. In addition to the *First Reference*, the Supreme Court again referred to constitutional conventions in *Re: Objection by Quebec to a Resolution to amend the Constitution*, [1982] 2 SCR 793 (the *Quebec Veto Reference*). More recently, this Court was called upon to review the Prime Minister's decision advising the Governor General to dissolve Parliament and to set an election date, in light of the *Canada Elections Act* having been amended to provide fixed election dates (*Conacher v Canada (Prime Minister)*, 2009 FC 920, [2010] 3 FCR 411). Mr. Justice Shore was not satisfied that a new convention existed that limited the ability of the Prime Minister to advise the Governor General. He was upheld by the Federal Court of Appeal from the bench (2010 FCA 131) and leave to appeal to the Supreme Court was refused ([2010] SCCA No 315).

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[27] Consequently, it is arguable at this stage that we are only left with the interpretation of statute, albeit a very important one. In the circumstances, it is not necessary for this Court to consider constitutional conventions in detail. Suffice it to say that both the majority and the minority in the *First Reference* and the Court in the *Quebec Veto Reference* adopted the definition given by Chief Justice Freedman in the *Reference re: Amendment of Constitution of Canada*, [1981] MJ No 95 (CA) (the *Manitoba Reference*), as quoted in the *Quebec Veto Reference* as follows at page 802:

> The majority opinion as well as the dissenting opinion both approved, at pp. 852 and 883, the definition of a convention given by Freedman C.J.M. in the Manitoba Reference and quoted at p. 883 of the *First Reference*:
>
> > What is a constitutional convention? There is a fairly lengthy literature on the subject. Although there may be shades of difference among the constitutional lawyers, political scientists, and Judges who have contributed to that literature, the essential features of a convention may be set forth

> with some degree of confidence. Thus there is general agreement that a convention occupies a position somewhere in between a usage or custom on the one hand and a constitutional law on the other. There is general agreement that if one sought to fix that position with greater precision he would place convention nearer to law than to usage or custom. There is also general agreement that "a convention is a rule which is regarded as obligatory by the officials to whom it applies". Hogg, *Constitutional Law of Canada* (1977), p. 9. There is, if not general agreement, at least weighty authority, that the sanction for breach of a convention will be political rather than legal.

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[28] If there is a valid constitutional convention, it is clear that the Court will not enforce it. The respondents submit that the Court should not even make a declaration on the point, because failure to adhere to a declaration may, in some circumstances, lead to contempt of Court and, thereby, indirect enforcement of a convention. They base themselves on *Assiniboine v Meeches*, 2013 FCA 114.

[29] *Assiniboine v Meeches* was a decision of Mr. Justice Mainville of the Federal Court of Appeal, sitting alone as duty judge. The appellants were seeking to stay a judgment of the Federal Court which declared that an Indian band election appeal committee had made a final and binding decision requiring new elections. At paragraphs 14 to 15 he referred to the decision of Mr. Justice MacGuigan in *LeBar v Canada*, [1989] 1 FC 603 (CA) and to the decision of the Supreme Court in *Doucet-Boudreau v Nova Scotia (Minister of Education)*, 2003 SCC 62. It was said in the latter that in appropriate cases, if public bodies or officials do not comply with a declaratory order, contempt proceedings could lie against the Crown.

[30] However, those circumstances were not spelled out. The statement in respect of contempt was in the majority reasons, written by Mr. Justice Iacobucci and Madam Justice Arbour, in which they disagreed with Mr. Justice Lebel and Madam Justice Deschamps, dissenting, that the trial judge's order that the court supervise the implementation of its decision was void.

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[31] If we took this point to its logical extreme, there would be no scope for a declaration that a constitutional convention requires a government official to do something.

[32] *LeBar* was an appeal from a judgment of the Federal Court Trial Division which declared that Mr. LeBar was entitled to have been released from prison earlier than when he in fact was released.

[33] Mr. Justice MacGuigan set out the principles of declarations in great detail. For these purposes it is sufficient to note that at pages 610-611, he said:

> … [A] declaration is a peculiarly apt instrument in dealing with bodies "invested with public responsibilities" because it can be assumed that they will, without coercion, comply with the law as stated by the courts. Hence the inability of a declaration to sustain, without more, an execution process should not be seen as an inadequacy of declaratory proceedings vis-à-vis the Government. Any power to enforce such a judgment against the Government would be superfluity.
>
> In my opinion, the necessity for the Government and its officials to obey the law is the fundamental aspect of the principle of the rule of law, which is now enshrined in our Constitution by the preamble to the Canadian Charter of Rights and Freedoms…
>
> …
>
> Elusive as it is as a concept, the rule of law must in all events mean "the law is supreme" and that officials of the Government have no option to disobey it. It would be unthinkable, under the rule of law,

> to assume that a process of enforcement is required to ensure that the Government and its officials will faithfully discharge their obligations under the law. That the Government must and will obey the law is a first principle of our Constitution.

[34] It is to be emphasized that Mr. Alani only seeks a declaration, and does not ask that it be enforced.

[35] Certainly it is premature to say now that this matter is not justiciable. If this is merely a matter of interpreting a statute, and it is not plain and obvious that it is not, then certainly the matter is justiciable.

[36] Without a doubt there is a political aspect to Senate appointments. From time to time the Senate, or some Senators, may be a source of embarrassment to the Government, to the House of Commons as a whole, and indeed, to many Canadians. However, I know of no law which provides that one may not do what one is otherwise obliged to do simply because it would be embarrassing. The Supreme Court made it perfectly clear in the *Reference re Senate Reform* that significant changes to the Senate, including its abolishment, require a formal constitutional amendment.

H. *Does this Court have jurisdiction?*

[37] I think some confusion arises between the concepts of justiciability and jurisdiction. If there is a valid constitutional convention the courts will not enforce it, but may make declarations in respect of its content. However, the jurisdiction to hear this application is quite a different matter. In accordance with sections 2 and 18 and following of the *Federal Courts Act*,

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this Court may judicially review the decisions of federal boards, commissions or other tribunals, which are defined as any body or person having, exercising or purporting to exercise jurisdiction or powers "conferred by or under an Act of Parliament or by or under an order made pursuant to a prerogative of the Crown…". Many decisions of Ministers of the Crown are subject to judicial review *(Irving Shipbuilding Inc v Canada (Attorney General)*, [2010] 2 FCR 488 (CA)). Current thought is that the Constitution, although originally enacted by the United Kingdom, is, following the patriation of our constitution, a law of Canada (*Canadian Transit Company v Windsor (Corporation of the City)*, 2015 FCA 88 at paras 47-49).

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[38] The respondents submit that constitutional conventions do not form part of the Crown prerogative, and therefore are not subject to judicial review. However, at this stage it cannot be said with any certainty whether or not the decision was grounded on a valid constitutional convention. Furthermore, there are some who would argue that constitutional conventions are akin to the Crown prerogative so that *Dyson*, above, would call for a hearing on the merits.

[39] In the alternative, Mr. Alani states that this Court has jurisdiction by virtue of section 17 of the *Federal Courts Act* as the Federal Court has concurrent original jurisdiction in all cases in which relief is claimed against the Crown.

[40] There are not enough established facts to justify going down that road at this time.

I. *Costs*

[41] Both sides sought costs. The respondents seek an order for $1,000.00 all inclusive, which is clearly much less than any amount which might be set under the tariff. Mr. Alani seeks costs in the same amount in any event of the cause on the basis that it was "plain and obvious" that this motion to strike at this stage was "doomed to failure". If an award is not granted now he reserves his right to seek a higher amount. He also seeks a public interest immunity from costs. I think it better to simply order that costs be in the cause.

II. Amendments to the Notice of Application

[42] In his reply to the respondents' motion to strike, Mr. Alani proposed certain amendments should the motion fail, and other amendments should it succeed, as in such instances the Court may strike with leave to amend. These latter proposed amendments need not be considered as the motion is dismissed.

[43] A good part of the proposed amendments simply reflect a shuffling of parts of the application to the grounds therefore, and pose no problem.

[44] He also proposes that the Queen's Privy Council for Canada be added as a respondent in light of the cabinet minutes referred to above. This is simply meant to cover the bases, and I see no issue.

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[45] However, he wishes to delete his reference to the Prime Minister making a decision. He rather seeks a declaration with respect to the Prime Minister's failure, refusal or unreasonable delay, or alternatively the Queen's Privy Council acting on his recommendation to advise the Governor General to fill existing vacancies in the Senate. This is not acceptable.

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[46] The whole basis on which this application has proceeded is that it is a judicial review of a decision. If those assertions are deleted, the application would look like a reference. Only federal boards and tribunals and the Attorney General of Canada may refer matters to the Court. Mr. Alani cannot.

[47] Thus the opening of the amended application shall read as it did in the original Notice of Application:

> THIS IS AN APPLICATION FOR JUDICIAL REVIEW in respect of the decision of the Prime Minister, as communicated publicly on December 4, 2014, not to advise the Governor General to summon fit and qualified Persons to fill existing Vacancies in the Senate.
>
> THE APPLICANT makes application for:
>
> 1) A declaration that:
>
> a) the Prime Minister of Canada must advise the Governor General to summon a qualified Person to the Senate within a reasonable time after a Vacancy happens in the Senate.

[48] The rest of the application and the grounds therefore may be amended as requested save and except for the beginning of number 12 of the Grounds of the amended application, which will read: "The Prime Minister's decision not to recommend…"

[49] This amended application is to be formally served and filed forthwith. Thereafter the normal delays set out in Rule 304 and following of the *Federal Courts Rules* shall be followed.

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ORDER

FOR REASONS GIVEN;

THIS COURT ORDERS that:

1. This motion to strike is dismissed, costs in the cause.

2. The style of cause is amended to add the Queen's Privy Council for Canada as a party respondent. It now reads:

ANIZ ALANI

Applicant

and

THE PRIME MINISTER OF CANADA, THE GOVERNOR GENERAL OF CANADA AND THE QUEEN'S PRIVY COUNCIL FOR CANADA

Respondents

"Sean Harrington"
Judge

2015 FC 649 (CanLII)

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2506-14
STYLE OF CAUSE:	ANIZ ALANI v THE PRIME MINISTER OF CANADA, THE GOVERNOR GENERAL OF CANADA AND THE QUEEN'S PRIVY COUNCIL FOR CANADA
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	APRIL 23, 2015
ORDER AND REASONS	JUSTICE HARRINGTON
DATED:	MAY 21, 2015

2015 FC 649 (CanLII)

APPEARANCES:

Mr. Aniz Alani	THE APPLICANT (ON HIS OWN BEHALF)
Jan Brongers Oliver Pulleyblank	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

William F. Pentney Deputy Attorney General of Canada	FOR THE RESPONDENTS

Date: 20070116

Docket: T-2138-06

Citation: 2007 FC 39

2007 FC 39 (CanLII)

Winnipeg, Manitoba, January 16, 2007

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

THE CANADIAN WHEAT BOARD

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] This motion arises in the context of an application for judicial review of a direction (the "Direction") issued by the Governor in Council (the "GIC") to the Canadian Wheat Board (the "CWB") pursuant to subsection 18(1) of the *Canadian Wheat Board Act*, R.S.C. 1985, c. C-24, as amended (the "Act"). The Direction prohibits the CWB from expending funds "directly or indirectly, on advocating the retention of its monopoly powers, including the expenditure of funds for advertising, publishing or market research" and providing funds "to nay other person or entity to enable them to advocate the retention of [such] monopoly powers."

[2] The CWB seeks an order setting an expedited hearing date and a timetable for the remaining steps necessary to bring this matter to hearing in an expeditious matter, and appointing a case management judge to oversee the conduct of this application.

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[3] The issue on this motion is therefore whether this Court ought to depart from the timelines prescribed in Part 5 of the *Federal Courts Rules, 1998* (the "Rules"), and more particularly, Rules 307, 308, 309, 310 and 314.

THE FACTS

[4] The CWB is a marketing agency created by the Act. Under that legislation, the CWB has, except as permitted under the regulations, control over the interprovincial and export trade of all wheat and barley in Canada, as well as control over the interprovincial and export marketing of wheat and barley produced in the designated area.

[5] The CWB's statutory purpose is to market grain in an orderly manner. To carry out that purpose, the CWB is given extraordinary regulatory powers over grain producers and other business enterprises in the grain handling, transport, processing and marketing system (section 5 of the Act).

[6] Following amendments to the Act in 1998, the CWB's board of directors assumed overall responsibility for directing and managing the CWB's business and affairs. Prior to that time, the CWB was directed by three to five federally appointed commissioners. The Board is now comprised of 10 directors elected directly by producers, four directors appointed by the Governor in

Council, and one director who is also the president and chief executive officer of the CWB and is appointed by the GIC following consultation with the Board.

[7] Following the federal election in early 2006, the government indicated its intention to implement what has variously been termed a "dual market", "marketing choice" and a "voluntary" CWB. The objective is to give western grain farmers the freedom to make their own marketing and transportation decisions, including the ability to participate voluntarily in the CWB.

[8] On October 5, 2006, the government issued Order in Council P.C. 2006-1092, which purports to prohibit the CWB from expending funds "directly or indirectly, on advocating the retention of its monopoly powers, including the expenditure of funds for advertising, publishing or marketing research" and providing funds "to any other person or entity to enable them to advocate the retention of the monopoly powers" of the CWB.

[9] In the Regulatory Impact Analysis Statement accompanying the Direction, as published in the *Canada Gazette* Part II, Vol. 140, No. 21, it is stated:

> It is important that the CWB, as a shared-governance entity, not undermine government policy objectives. This Governor in Council order directing the CWB not to spend money on advocacy activity will ensure that the CWB carries out its operations and duties in a manner which is not inconsistent with the federal government's policy objectives.

[10] That Direction Order was issued pursuant to subsection 18(1) of the Act which provides that the GIC may, by order, direct the CWB with respect to the manner in which any of its operations, powers and duties under the Act shall be conducted, exercised or performed.

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[11] On December 4, 2006, the CWB filed a Notice of Application in this Court for judicial review of the Direction. It is argued, *inter alia*, that the Direction is *ultra vires* the authority granted to the Governor in Council pursuant to subsection 18(1) of the Act, and that it contravenes subsection 2(b) of the *Canadian Charter of Rights and Freedoms*.

[12] On January 4, 2007, the CWB brought a motion to expedite the hearing of its application for judicial review. As stated in the CWB's factum, the issue to be decided is whether urgent circumstances or other valid reasons exist justifying an order for an expedited hearing and setting a timetable for the remaining steps in the application. As for the need for this proceeding to be specially managed, it is contingent on the resolution of the first question.

ANALYSIS

[13] Rule 8(1) of the *Federal Courts Rules* provides that a Court may extend or abridge a period provided by these Rules. It does not stipulate the factors upon which the discretion to extend or abridge time is to be exercised. However, the parties agree on the factors to be taken into consideration in exercising that discretion. They have been aptly summarized by the respondent in the following four questions:

- Is the proceeding really urgent or does the moving party simply prefer that the matter be expedited?
- Will the respondent be prejudiced if the proceeding is expedited?
- Will the proceeding be rendered moot if not decided prior to a particular event?
- Would expediting the proceeding result in the cancellation of other hearings?

Pearson v. Canada, [2000] F.C.J. No. 246 (F.C.)(QL); *Apotex Inc. v. Wellcome Foundation Ltd.* (1998), 228 N.R. 355, F.C.J. No. 859 (F.C.A.)(QL); *Esquega v.*

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> *Canada (Attorney General)*, 2006 FC 297 (F.C.); *Del Zotto v. Canada (Minister of National Revenue)* (2000), 257 N.R. 56, (F.C.A.).

[14] Before applying these factors to the facts of this case, I hasten to say that the burden is on the party seeking to vary the time frame provided by the Rules. While an application for judicial review must be dealt with more quickly than an action, the rule of law nevertheless requires that the parties be given enough time to prepare their records and submissions. The compromise reflected in Part 5 of the Rules should not be altered without giving the matter proper consideration. As Prothonotary Roger Lafrenière wrote in *Gordon v. Canada (Minister of National Defence)*, 2004 FC 1642, at paragraph. 17:

> Section 18.1 of the *Federal Courts Act* establishes a scheme for judicial review of federal administrative tribunals. In furtherance of that scheme, section 18.4 provides that judicial review applications "shall be heard and determined without delay and in a summary way." The timeframes provided by the Rules are designed to give the parties adequate time to prepare the case so that the Court can properly decide the matter before it, thereby rendering justice to the parties, while also respecting the objective of deciding the matter without delay. Any departure from these rules – and especially an abridgement – is exceptional.

[15] The CWB has argued that the matter is urgent, as the Direction is impeding its ability to carry out its mandate and fulfil its obligations. It is contended that CWB staff are having difficulty applying the Direction and must frequently seek legal advice before issuing external communications or publishing reports. Moreover, employees are apparently fearful of communicating in an open manner with producers and with the public, and do not know what they can and cannot say.

[16] The CWB also alleges that if the plebiscite on the marketing of barley is conducted before the Court determines the Direction's validity, the CWB's application will in part be rendered moot.

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In this respect, it must be noted that the Minister announced last Friday, January 12, 2007, that the voting period will commence with the mailing of ballots on January 31 and that the last day for return ballots to be postmarked will be March 6, 2007. Accordingly, the applicant is of the view that producers are entitled to have all relevant information available to them in making such a decision, which will not be the case if the application for judicial review is heard after the ballots have to be cast.

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[17] There are at least three problems with this submission. First of all, there is no evidence before this Court that the producers will be prevented from making an informed decision if the CWB is not allowed to take a stand and campaign, or even to communicate with the producers and explain the advantages of the current system. This is a debate that has been going on for a long time, and there are other sources of information (including the media) ensuring that an open and transparent clash of opinions will take place.

[18] Even if I were prepared to accept that the CWB has a unique expertise and is the repository of studies and data that will not likely be disseminated by other participants in the upcoming plebiscite, I do not think it would be enough to make the CWB's application for judicial review urgent. Without going into the merits of each side's arguments about the effect of the Direction, it is fair to say that the applicant has not conducted itself as if the application is urgent. First of all, it did not file its application for judicial review within the 30 days required by subsection 18.1(2) of the *Federal Courts Act*, but waited instead approximately 60 days after the Direction was communicated to it.

[19] The CWB has known that there would be a barley plebiscite early in 2007, since the Minister first announced it on October 31, 2006. Despite this knowledge, the CWB did not file its

application for judicial review until some 34 days after that announcement. Even if I were to accept that this delay can be explained by the fact that the CWB initially believed it could continue to fulfil its statutory obligations while complying with the Direction, and also by the concern about commencing legal proceedings with the government during the election period of some of its board members, the fact remains that the CWB waited another month after filing its application for judicial review before bringing this motion for an expedited hearing. To that extent, it is fair to say that the applicant has itself created a false sense of urgency through its own delay.

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[20] But there is more. The applicant argues that its application will be rendered moot in part if it is not heard before the barley plebiscite. As a result, the applicant proposes, by way of the proposed schedule attached to its notice of motion, to have its application heard on an expedited basis on February 15-16, 2007, or as soon as thereafter as possible. Any hearing that takes place on February 15-16, 2007, will take place half-way through the voting period on the barley plebiscite. If the judge who ultimately hears this complex application on February 15 or 16, decides to reserve his or her decision, any such decision will likely be delivered towards the end of the voting period, if not after.

[21] Finally, there is another reason why I am not inclined to grant the applicant's motion. For the hearing to take place on February 15 or 16, the time frame for the various proceedings would have to be seriously curtailed. Considering the complexity of this application, and the fact that it raises a constitutional issue, I am of the view that the respondent would be seriously prejudiced if he was required to file his affidavits and complete his cross-examinations within a week, and to prepare his record and his submission within the two following weeks. This would not only impede the respondent's capacity to answer the applicant's arguments, but it would also have an impact on

this Court's ability to adjudicate this important and complex matter with the benefit of fulsome representations from both sides.

[22] For all of these reasons, I find that there is no substantial reason to depart from the timelines prescribed in Part 5 of the Rules. The applicant's motion for an order setting an expedited hearing date and a timetable for the remaining steps is therefore dismissed. There is no need, in light of that decision, to appoint a case management judge to oversee the conduct of this application.

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ORDER

THIS COURT ORDERS that the motion for an Order setting an expedited hearing date and for an Order appointing a case management judge is dismissed, with costs.

"Yves de Montigny"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2138-06
STYLE OF CAUSE:	The Canadian Wheat Board v. Attorney General of Canada
PLACE OF HEARING:	Winnipeg, Manitoba
DATE OF HEARING:	January 15, 2007
REASONS FOR ORDER:	de MONTIGNY J.
DATED:	January 16, 2007

APPEARANCES:

J.L. McDougall, Q.C. Matthew Fleming	FOR THE APPLICANT
D.N. Abra, Q.C. Steve Vincent	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Fraser Milner Casgrain LLP Toronto, Ontario	FOR THE APPLICANT
Hill Abra Dewar Winnipeg, Manitoba	FOR THE RESPONDENT

2007 FC 39 (CanLII)

Date: 20081003

Docket: T-1500-08

Citation: 2008 FC 1119

2008 FC 1119 (CanLII)

Ottawa, Ontario, October 3, 2008

PRESENT: Madam Prothonotary Roza Aronovitch

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

REASONS FOR ORDER AND ORDER

[1] This is a motion to expedite the hearing of the underlying application. The applicants who filed their notice of application on September 26, 2008, impugning the legality of the actions of the Prime Minister, the Governor General of Canada, and of Governor in Council culminating in the calling of the forthcoming general election, and alleging breaches of the *Canadian Charter of Rights and Freedoms*, are asking that the case be heard in less than a week, on October 8, 2008.

Conclusion

[2] For the reasons that follow I will deny the motion. In sum, the applicants waited too long. They have not satisfactorily explained their delay in bringing these proceedings or satisfied the Court of the urgency and necessity of expediting the hearing of the application issued on the eve of the election.

[3] The applicants have relied on the fact that they could not have earlier moved for an interlocutory injunction to stop the election. It would have been denied given that the balance of convenience would have favoured proceeding with the election. All the more reason not to have waited until the eve of the election to bring this proceeding.

[4] The case raises novel and complex, constitutional issues, including a *Charter* challenge alleging that the rights of Canadians to participate in fair elections is infringed. Expediting the hearing in these circumstances, would require that serious issues be determined, essentially on the fly, without a fair opportunity to the Attorney General to respond and without the benefit to the Court of considering weighty issues of broad consequence on the basis of a full and complete record.

[5] As a result of denying this motion, part of the relief sought by way of orders to quash the impugned decisions and to stop the election will be rendered moot. It is, in my view, justified in the circumstances. The applicants have sat on their rights with the consequence that the respondents

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will be prejudiced in making their best case in response. I bear in mind that the applicants are not precluded from pursuing their declarations as to the legality of the election and the alleged breaches of the *Charter* after the election, and that they stand prepared to do so.

[6] Finally, I note below that in determining whether the hearing of an application for judicial review should be expedited I am not called upon and to assess the merits of the case and take no position on the matter.

Background

[7] The applicants are Duff Conacher and Democracy Watch. Democracy Watch is a non-partisan not-for-profit organization that advocates democratic reform, citizen participation in public affairs, government and corporate accountability, and ethical behaviour in government and business in Canada. Mr. Conacher is the coordinator of the organization.

[8] On September 7, 2008, the Governor General issued a Proclamation dissolving Parliament and a Proclamation issuing the Writs of Election setting forth October 14, 2008 as the date of the general election. Democracy Watch's application was filed on September 26, 2008, and served on the respondents along with this notice of motion, on September 29, 2008.

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The nature of the application

[9] The application which Democracy Watch would like heard next week puts at issue the scope of constitutional, prerogative, and statutory powers relating to the dissolution of Parliament and the issuance of writs for general election.

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[10] The powers are governed, in part, by section 56.1 and subsection 57(1) of the *Canada Elections Act (Act)* which provide as follows:

Powers of Governor General preserved	Maintien des pouvoirs du gouverneur général
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.	**56.1** (1) Le présent article n'a pas pour effet de porter atteinte aux pouvoirs du gouverneur général, notamment celui de dissoudre le Parlement lorsqu'il le juge opportun.
Election dates	Date des élections
(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.	(2) Sous réserve du paragraphe (1), les élections générales ont lieu le troisième lundi d'octobre de la quatrième année civile qui suit le jour du scrutin de la dernière élection générale, la première élection générale suivant l'entrée en vigueur du présent article devant avoir lieu le lundi 19 octobre 2009.
…	…
General election — proclamation	Élection générale : proclamation
57. (1) The Governor in Council shall issue a proclamation in order for a general election to be held.	**57.** (1) Pour déclencher une élection générale, le gouverneur en conseil prend une proclamation.

[11] More precisely, the applicants are asking for orders:

- quashing the action by the Prime Minister advising the Governor General to dissolve Parliament on September 7, 2008;
- quashing the decision of the Governor General to dissolve Parliament and ordering that the Writs of Election set forth October 14, 2008 as the polling day; and
- quashing the action of the Governor in Council in issuing a proclamation of a general election to be held on October 14, 2008.

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[12] In the alternative, the applicants are seeking declarations to the effect that:

- the action of the Prime Minister advising the Governor General to dissolve Parliament on September 7, 2008 contravened section 56.1 of the *Act* and section 3 of the *Canadian Charter of Rights and Freedoms* (*Charter*);
- given the illegality of the Prime Minister's advice, the Governor General improperly exercised her discretion to dissolve Parliament; and
- 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*.

[13] The grounds for the challenge to the "legality" of the impugned actions, in essence, is as follows. Democracy Watch maintains that the amendment to the *Elections Act* which came into force on May 3, 2007, setting October 19, 2009, as the date for the next general election, is to be read as limiting the discretion of the Governor General to dissolve Parliament such that she may only exercise that discretion once there has been a vote of non-confidence in the House. There has

not been such a vote, therefore, say the applicants, the election call contravenes section 56.1 of the *Act*, and is unlawful.

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[14] The other grounds of the application are the alleged breaches of section 3 of the *Charter*, which confers on citizens the right to vote in the election of members of the House of Commons and the provincial legislative assemblies, and to be qualified for membership therein. In other words, to vote and to run for office.

[15] The applicants point out that electoral fairness is a fundamental value in Canadian society, and that such elections must be both free and fair[1]. With regard to the second ground of their application, the applicants say that because the Prime Minister called the election unexpectedly, that is to say without a confidence vote, his party will have an unfair advantage in the election. The lack of fairness is said to be exacerbated because there was no notice of the election, such that members of the public who intended to run as candidates, volunteers and the voters themselves will have been hindered from participating in a fair election, in contravention of the *Charter*.

Criteria to be met to expedite a proceeding

[16] The following factors are to be considered by the Court in exercising its discretion to grant a motion to expedite:

[1] *Figueroa v. Canada (Attorney General)*, (2003) S.C.C. 37 (Can L11) p. 51

- Is the proceeding really urgent or does the moving party simply prefer that the matter be expedited?
- Will the respondents be prejudiced if the proceeding is expedited?
- Will the proceeding be rendered moot if not decided prior to a particular event?
- Would expediting the proceeding result in the cancellation of other hearings?[2]

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[17] I will address these questions in turn. Given the serious nature of this application, I begin by noting that I need not have regard to the last of the factors.

Is the proceeding really urgent or does the moving party simply prefer that the matter be expedited?

[18] The party seeking to expedite the hearing of a judicial review application bears the burden of demonstrating there is an urgency to warrant such an order, which is granted only in exceptional cases.[3]

[19] The applicants have provided little evidence to support the motion to expedite. That is to say, they address the merits of the underlying application but not the test to be met in seeking to expedite a hearing. There is no evidence, indeed, no explanation of any kind, to explain why the applicants waited three weeks to bring their application with the result that they now ask that this

[2] *Canada (Canadian Wheat Board) v. Canada (Attorney General)*, 2007 FC 39, [2007] F.C.J. No. 92 at para. 13 (*Wheat Board*)
[3] *Moresby Explorers Ltd. V. Canada (Attorney General)* (2004), 2004 FC 608, 251 F.T.R. 302 and *Wheat Board* at para. 14.

judicial review application be heard only days after it was filed, and some two to three working days before the date of the scheduled general election.

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[20] The applicants explain that they could not have moved for a stay of the election or sought to prevent it by applying for an interlocutory injunction because "the balance of convenience" would always favour proceeding with the election. All the more reason to have moved immediately on the merits.

[21] The applicants point to the fact that the time between writs being issued and the holding of an election would never be sufficient to permit the question of the legality of an election call to be adjudicated within the time normally prescribed for the prosecution of a typical application for judicial review. Cognizant of this, Democracy Watch did not act sooner, certainly not with the urgency that is warranted in the circumstances. The time constraints and crisis now invoked by the applicants, it would appear, is of the applicants' making.

Will the respondents be prejudiced?

[22] Contrary to the submissions of the applicants in this regard, the issues raised in the underlying application are weighty, substantial and complex. They do not simply call for a determination of law to be made following legal argument. The allegation that the election contravenes section 3 of the *Charter*, in particular, needs to be adjudicated on the basis of a full

factual record. The Supreme Court of Canada has repeatedly observed that *Charter* questions can not be decided in the absence of a proper evidentiary record.[4]

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[23] Recognizing the factual complexity presented by the *Charter* challenge, counsel for the applicants at the hearing of this motion, offered to withdraw the expert affidavits of Professors Leduc and Mendes which the applicants proposed to file on the merits. The applicants also undertook not to require, that the Crown provide them with certified copies of all documents relating to the impugned decisions. They would be content to rely on the press releases and excerpts from the Hansard that speak to the government's own pronouncements as to the effect of their legislation fixing the next election date. Together, these documents comprise the 13 exhibits to the affidavit of Duff Conacher submitted in support of this motion.

[24] By the same token, Democracy Watch maintains that the respondents would remain free to adduce any evidence it wishes, albeit in the less than two days that would be allotted to it. The Attorney General responds that he is prejudiced and would not have a fair chance to make his case. At best, if the matter were to be heard before October 14, the respondents would have until Monday next to adduce its evidence to respond to the *Charter* challenge.

[25] All cross-examinations would have to be completed in one day, on Tuesday. The parties would then have to file their respective records on Tuesday and Wednesday, for a hearing on the merits on Thursday of next week. This proposal, in my view, is unreasonable, unwarranted and

[4] *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at 80 and *McKay v. Manitoba*, [1989] 2 S.C.R. 3 at

prejudicial. Whether or not applicants forgo their right to adduce more ample evidence, the respondents are entitled to make a full defence and to provide a complete factual record to rebut the allegation that the *Charter* rights of Canadians to participate in a fair election have been infringed. I would add that it would hardly serve the interests of justice to have a decision made in relation to such weighty issues on a reduced and inadequate record.

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Would the proceeding be rendered moot if not decided prior to October 14?

[26] Refusing to expedite the hearing will render moot part of the relief sought by the applicants to quash the decisions of the Prime Minister and the Governor General and effectively stop the election.

[27] However, even if the matter were heard on October 8 or 9, given the complex, novel, and substantive issues raised by this application, it is unlikely that a judgment would issue prior to the date of the general election. Counsel for the applicants concedes moreover that if such a judgment were to issue prior to the election date, the presiding judge may well choose not to quash the impugned decision, as quashing the decision would have the effect of stopping the election. Instead, the Court might grant only the appropriate declaratory relief. Indeed, the applicants have conceded that it was not open to them to ask for a interlocutory injunction to stay the election, recognizing that such an application would not have succeeded as the balance of convenience would always favour the election proceeding.

[28] As to the other relief sought by the applicants, they admit that refusing to expedite the hearing will not render the determination of the declaratory relief moot. The applicants maintain, moreover, that if the hearing is not expedited, they will nevertheless pursue the adjudication of their declarations of invalidity after the elections are held. They point out that there is similar legislation in the provinces and the outcome of the Court's determination as to the legality of the impugned actions, in this case, will inform and guide the action of governments in future elections.

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The Merits

[29] I am not called upon to assess the merits of the case in deciding whether an application for judicial review should be expedited. It is evident, and is not contested by the respondents that the application raises important issues for determination. The question is whether they are best determined in the artificially constricted timeframes suggested. I find that they are not.

Other matters

[30] The applicants acknowledge that on the basis of the application as presently constituted they will require leave of the Court pursuant to Rule 302 of the *Federal Court Rules*. The applicants impugn a number of decisions within the same application. Save with leave of the Court, the Rule limits an application to a single order in respect of which relief may be sought.

[31] The applicants' motion to bring this motion on for hearing at general sittings, yesterday, on short notice, was not contested and will be granted on consent.

[32] The applicants' motion to add the Attorney General as a party respondent will be granted on consent, subject to the respondents' reservation of rights.

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ORDER

1. The applicants' motion to abridge the time for bringing the within motion is granted, on consent.

2. The Attorney General is added as respondent to the application without prejudice to the right of the respondents to object to the propriety of naming the Prime Minister of Canada, the Governor General and the Governor in Council as respondents.

3. The applicants' motion to expedite the hearing of the application on the merits on October 8 or 9, 2008, is denied, with costs.

"R. Aronovitch"
Prothonotary

FEDERAL COURT

SOLICITORS OF RECORD

2008 FC 1119 (CanLII)

DOCKET: T-1500-08

STYLE OF CAUSE:

DUFF CONACHER and DEMOCRACY WATCH

v.

**THE PRIME MINISTER OF CANADA,
THE GOVERNER IN COUNCIL OF CANADA and
THE GOVERNOR GENERAL OF CANADA**

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: October 2, 2008

REASONS FOR ORDER AND ORDER: ARONOVITCH P.

DATED: October 3, 2008

APPEARANCES:

Mr. Peter Rosenthal	FOR THE APPLICANT(S)
Mr. Christopher Rupar	FOR THE RESPONDENT(S)

SOLICITORS OF RECORD:

Roach, Schwartz & Associates Toronto, Ontario	FOR THE APPLICANT(S)
Department of Justice Ottawa, Ontario	FOR THE RESPONDENT(S)

Case Name:

Gordon v. Canada (Minister of National Defence)

Between
Robert Gordon, Journalist, and Canadian Broadcasting Corporation, applicants, and
Minister of National Defence, respondent

[2004] F.C.J. No. 2000

[2004] A.C.F. no 2000

2004 FC 1642

2004 CF 1642

22 Admin. L.R. (4th) 25

135 A.C.W.S. (3d) 765

2004 CarswellNat 4363

Docket T-1976-04

Federal Court

Lafrenière, Prothonotary

Heard: November 5, 2004, by video conference (Ottawa-Halifax); November 15 and 18, 2004 (Toronto).
Judgment: November 23, 2004.

(22 paras.)

Civil procedure -- Time -- Extension or abridgment under rules -- Administrative law -- Judicial review and statutory appeal.

Application by Gordon and Canadian Broadcasting Corporation against the respondent, Minister of National Defence, for an order that notice periods and other time requirements be abridged and a

hearing date be fixed. The application was for judicial review of a refusal by a Board of Inquiry convened by the Canadian Forces for media access to the Board's proceedings. It was anticipated that the Board's hearings would conclude shortly. An emergency motion for a stay of the Board's proceedings was dismissed. The applicants requested that the hearing of the judicial review application be scheduled within a few days.

HELD: Motion dismissed. The matter could not be viewed as urgent in circumstances where the proceedings had been ongoing for a month before the applicants requested access. The applicants already missed the opportunity to have access to a significant portion of the hearing. The applicants created an artificial sense of urgency through their own delay. The application had implications for similar boards of inquiry under other legislation. Any departure from the rules for time was exceptional. The respondent would be seriously prejudiced if required to rush to deal with the application. Irreparable harm to the applicants was not established.

Statutes, Regulations and Rules Cited:

Canadian Charter of Rights and Freedoms, 1982, s. 2(b).

Federal Courts Act, s. 18.1, 18.4.

Federal Court Rules, 1998, Rules 8(1), 307, 308, 309, 310, 314.

National Defence Act, s. 45.

Counsel:

David Coles, for the applicants.

Martin Ward and Elizabeth Richards, for the respondent.

REASONS FOR ORDER AND ORDER

1 LAFRENIÈRE, PROTHONOTARY:-- The applicant, Robert Gordon, is a journalist employed by the co-applicant, the Canadian Broadcasting Corporation (the "CBC"). The two applicants seek an order that the notice periods and other time requirements under the Federal Court Rules, 1998 ("the Rules") that are applicable to their application for judicial review be abridged, and that a date be fixed as soon as possible for a hearing of the application for judicial review. Alternatively, they seek directions from the Court for the proper procedure to expedite the proceeding.

2 The issue on this motion is whether the Court ought to depart from the timelines prescribed in

Part 5 of the Rules, and more particularly, Rules 307, 308, 309, 310 and 314.

Background

3 The main proceeding is an application for judicial review in respect of a decision dated November 4, 2004 of a Board of Inquiry convened by the Canadian Forces pursuant to s. 45 of the National Defence Act to investigate and report on the death and casualties suffered onboard the HMCS Chicoutimi on October 5, 2004 (the "Board").

4 The Board has been tasked to complete its proceedings and report by November 30, 2004. It collected evidence and heard witnesses for 3 weeks in Scotland before commencing proceedings in Halifax in early November.

5 The Canadian media, including the applicants, first requested access to the Board's proceedings in Halifax on November 2, 2004. After their informal request was denied, the applicants made an application, pursuant to Section 12 of the Board of Inquiries Terms of Reference, for immediate access to the hearings, or alternatively, for an opportunity to make representations before the Board in support of their request for access.

6 The President of the Board denied the applicants' request for immediate access and also declined to hear oral submissions. He agreed, however, to accept written representations in support of the applicants' request.

7 On November 5, 2004, following receipt of written submissions, the Board denied the applicants access to the Board hearing on the basis that the Board is an internal investigation body, and not a public inquiry or quasi-judicial body. The Board indicated that its mandate must be exercised in a very short time, and that allowing public access would delay the proceeding.

8 The applicants responded with an application for judicial review and an emergency motion for a stay of the Board's proceedings on the grounds that there was a denial of their Charter rights. Harrington, J. accommodated the applicants by holding an emergency hearing on the night of Friday, November 5, 2004 and into the early morning of Saturday, November 6, 2004.

9 At the conclusion of the hearing, Harrington, J. dismissed the motion orally, having concluded that the applicants failed to establish that there was a serious issue, that they would sustain irreparable harm, or that the balance of convenience was in their favour. He added that his decision should not be interpreted as dispositive of the merits of the application for judicial review, and that the applicants were entitled to bring a motion for an expedited hearing, if so advised. The applicants accepted this invitation by bringing the present motion.

10 When questioned at the hearing of the motion as to what the applicants were seeking in terms of expedited schedule, their counsel replied that they wanted the hearing of the application held within the next few days. Counsel maintained that the respondent could simply limit himself to the

affidavit evidence he has already filed in response to the stay motion, that cross-examination on affidavits could be dispensed with, and that the respondent should be required to serve and file his record immediately.

Analysis

11 Rule 8(1) of the Rules gives the Court the general power to extend or abridge any period set out in the Rules in appropriate circumstances. In order to obtain an abridgment of time, an applicant must establish not only that the matter is urgent, but also that the respondent will not be prejudiced by the compromise of the established procedure: Pearson v. Canada, [2000] F.C.J. No. 246 (T.D.) at para.15; Moresby Explorers Ltd. v. Canada (Attorney General), [2004] F.C.J. No. 738 at para. 43.

12 The applicants state in their notice of application that their right to free expression, protected by section 2(b) of the Canadian Charter of Rights and Freedoms ("the Charter"), has been infringed by the Board decision. According to the applicants, if an infringement of their right to free expression has occurred, the only remedy that alleviates the infringement is that the applicants be allowed access to the Board hearings. Expediency is therefore necessary, from the applicants' perspective, to ensure that an appropriate remedy is available. The applicants maintain that the balance of convenience favours abridging the time in order to protect them, and the public, from an infringement of their right to free expression.

13 For the reasons that follow, I decline to grant the relief requested.

14 First, the matter cannot be viewed as urgent in circumstances where the proceedings have been ongoing since October 8, 2004, and there has been no request by the applicants for access until the first week of November. The applicants have already missed the opportunity to seek access to a significant portion of the inquiry, and it is anticipated that the Board hearing will be concluded shortly.

15 The applicants have created an artificial sense of urgency through their own delay. The testimony of witnesses before the Board commenced in Scotland on October 11, 2004. It was public knowledge that the hearing had begun and the applicants had reporters in Scotland reporting on the progress of the Board. The fact that the hearing moved to Halifax in early November cannot, in the circumstances, be viewed as an anticipated event which would trigger the right to an expedited hearing.

16 Secondly, the respondent disputes the applicants' assertion that this application for judicial review is ready for hearing. The parties agree that this judicial review application raises complicated issues, including constitutional questions concerning freedom of the press under section 2(b) of the Charter. The respondent submits that it also raises issues concerning the status of boards of inquiry, established pursuant to legislation, whose legislative mandate is to investigate and report on facts. According to the respondent, this application therefore has implications not only for this particular Board of Inquiry, but also for similar boards constituted under other legislation.

17 Section 18.1 of the Federal Courts Act establishes a scheme for judicial review of federal administrative tribunals. In furtherance of that scheme, section 18.4 provides that judicial review applications "shall be heard and determined without delay and in a summary way." The timeframes provided by the Rules are designed to give the parties adequate time to prepare the case so that the Court can properly decide the matter before it, thereby rendering justice to the parties, while also respecting the objective of deciding the matter without delay. Any departure from these rules - and especially an abridgement - is exceptional.

18 In light of the complexity of the issues raised in the application, I find that the respondent would be seriously prejudiced if he were required to rush to deal with this application, particularly within a timeframe which would be of any practical benefit to the applicants. Inadequate preparation time would not only prejudice the respondent, but would also risk compromising the ability of the Court to adjudicate this matter properly by requiring it to decide significant matters without the benefit of proper material before it. As O'Keefe' J. observed in Moss v. Canada, [2000] F.C.J. No. 486 (T.D.) at para. 3.:

> ... I would not grant the short leave request pursuant to the Federal Court Rules for the hearing of this application. The matters are complicated and in this case the Respondent should be allowed to file its materials and take the steps allowed by the rules. In fact, this is necessary in order to allow the Court to properly deal with the issues that are raised in the request.

19 The denial of the benefit of the timelines in the Rules which would allow the respondent an adequate opportunity to properly prepare its case for determination is not merely a matter of inconvenience for the respondent and the Court. It is matter of prejudice that is not outweighed by the applicants' desire to proceed quickly.

20 Thirdly, this matter cannot be viewed as urgent since irreparable harm to the applicants has not been established. The issue of irreparable harm has already been considered by Harrington, J., who rejected the argument and concluded that the Board could continue with its hearings in the applicants' absence. Although the findings of Harrington, J. were made in the context of a motion to stay the Board inquiry, essentially the same facts and arguments are being advanced by the parties on this motion. The stay having been denied on the grounds that there was no irreparable harm, it would be inappropriate for me to revisit the issue.

Conclusion

21 In summary, I find that the respondent would suffer serious prejudice if the timelines are abridged to the extent necessary to be of any practical benefit to the applicants. I am also unable to conclude that there is sufficient urgency to the application such as to warrant an expedited hearing in the manner proposed by the applicants. The applicants' motion for an immediate hearing of the application must therefore be dismissed.

22 Notwithstanding that the remedy of immediate access to the Board hearing may no longer be practical, the applicants continue to seek access to the transcripts of the hearing, which have not been made public. In order to ensure that the important issues of freedom of speech raised by the applicants can be addressed by this Court in a timely manner, while at the same time protecting the rights of the respondent, I am prepared to direct that the application for judicial review be fixed for hearing at the earliest available date in Halifax.

ORDER

THIS COURT ORDERS that:

1. The application for judicial review in this matter be heard at the Federal Court in Halifax, Nova Scotia, on Wednesday, February 9, 2005 at 9:30 a.m.
2. The motion to abridge the notice periods and all other time requirements associated with an application for judicial review is otherwise dismissed.
3. To facilitate the expeditious determination of this matter, the application shall continue as a specially managed proceeding.
4. The schedule for completion of the remaining steps in the proceeding is as follows:

    (a) The certified record of the tribunal shall be served and filed by November 29, 2004.
    (b) The respondent shall serve and file the respondent's affidavit evidence no later than December 13, 2004.
    (c) The parties shall complete cross-examinations by December 20, 2004.
    (d) The applicants shall serve and file the applicants' application record no later than January 10, 2005.
    (e) The respondent shall serve and file his application record by January 31, 2005.

5. There shall be no order as to costs of the motion.

LAFRENIÈRE, PROTHONOTARY

cp/e/qw/qlaim

Federal Court of Appeal | Cour d'appel fédérale

Date: 20110408

Docket: A-151-11

Citation: 2011 FCA 130

2011 FCA 130 (CanLII)

Present: **NADON J.A.**

BETWEEN:

ELIZABETH MAY

Applicant

and

CBC/RADIO CANADA, CTV TELEVISION NETWORK LTD., GLOBAL TELEVISION NETWORK INC. and TVA GROUP INC.

Respondents

Heard at Ottawa, Ontario, on April 5, 2011.

Order delivered at Ottawa, Ontario, on April 5, 2011.

Reasons for Order delivered at Ottawa, Ontario, on April 8, 2011.

REASONS FOR ORDER BY: NADON J.A.

Federal Court of Appeal | Cour d'appel fédérale

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Respondents

REASONS FOR ORDER

NADON J.A.

[1] On Tuesday, April 5, 2011, I heard the applicant's motion for an expedited hearing under subsection 8(1) of the *Federal Courts Rules*, SOR/98-106. At the end of the hearing, I informed the parties that I would dismiss the motion and that Reasons would follow on Friday, April 8, 2011. These are the reasons for which I concluded that the applicant's motion should be dismissed.

[2] The issue is whether I should grant the applicant's motion for an expedited hearing of her application for judicial review.

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[3] Ms. Elizabeth May, the applicant and current leader of the Green Party, commenced an application for judicial review on March 31, 2011, of the Canadian Radio-television and Telecommunications Commission's (the "CRTC") *Broadcast Information Bulletin* 2011-218 (the "Bulletin"). The Bulletin was issued pursuant to section 347 of the *Canada Elections Act*, which requires the CRTC to issue, within 4 days of the election writ being dropped, a set of guidelines pertaining to the applicability of the *Broadcasting Act* and its *Regulations* to the conduct of broadcasters during a general election.

[4] The Bulletin refers to the CRTC's *1995 Guidelines* (the "Guidelines") to the effect that not all party leaders need be included in the leaders' debates, as long as equitable coverage of all parties is provided during the election campaign such that the public is reasonably informed on all issues from a variety of viewpoints.

[5] The applicant requests two alternative forms of relief in her Notice of Application. First, she asks for a *mandamus* order from this Court requiring the CRTC to issue clear criteria as to which party leaders must be included in a leaders' debate, and that these criteria should require the inclusion of any leader whose party secured more than 2% of the popular vote in the prior election. In the alternative, she asks for a *mandamus* order requiring the respondents, the Canadian Broadcasting Corporation (the "CBC") and its broadcasting partners in the Broadcaster Consortium – namely, CTV Television Network Ltd., Global Television Network Inc. and TVA Group Inc. – to allow the applicant to participate in the leaders' debates scheduled for April 12 and 14, 2011.

[6] In support of her application, the applicant argues that the Bulletin is *ultra vires* the CRTC's powers because it violates her right of effective participation in a fair electoral process under section 3 of the *Canadian Charter of Rights and Freedoms* [*Charter*].

[7] In my view, the motion must be dismissed and this for several reasons.

[8] First, the applicant could have sought relief earlier than she did – a mere 12 days before the first leaders' debate. It was repeatedly argued by the applicant that she had no choice but to seek urgent relief, since the administrative action affecting her rights, the CRTC Bulletin, was issued only after the election writ was dropped, pursuant to section 347 of the *Canada Elections Act*. In her view, if the application had been brought earlier, the respondents would likely have argued that it was premature. Thus, if the hearing is not expedited, it will become moot.

[9] In essence, the applicant argues that the Bulletin is a decision or order of a federal board within the meaning of subsection 18.1(2) of the *Federal Courts Act* and that judicial review is impossible until such a decision or order has been made.

[10] This argument, in my respectful view, is wrong. While it is true that, normally, judicial review applications before this Court seek a review of decisions of federal bodies, it is well established in the jurisprudence that subsection 18.1(1) permits an application for judicial review "by anyone directly affected by the matter in respect of which relief is sought". The word "matter"

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embraces more than a mere decision or order of a federal body, but applies to anything in respect of which relief may be sought: *Krause v. Canada*, [1999] 2 F.C. 476 at 491 (F.C.A.). Ongoing policies that are unlawful or unconstitutional may be challenged at any time by way of an application for judicial review seeking, for instance, the remedy of a declaratory judgment: *Sweet v. Canada* (1999), 249 N.R. 17.

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[11] Here, the impugned CRTC Bulletin contains a reference to the Guidelines, which contain the same impugned rule. In fact, the same impugned rule has applied to leaders' debates in federal elections since 1995. As such, it qualifies as an "ongoing policy" that could have been and can be challenged at any time by the applicant. Consequently, the applicant did not need to wait until the Bulletin for the 2011 general election was issued to bring her application.

[12] Given this fact, I find that the proceeding is not "really urgent", but rather that the applicant simply prefers the matter to be expedited: *Canada (Canadian Wheat Board) v. Canada (Attorney General)*, 2007 FC 39 at paragraph 13. The lack of necessary urgency weighs against granting this motion.

[13] Second, the respondents, the applicant and the public interest would all suffer significant prejudice if the application were expedited. In *Dragan v. Canada (Minister of Citizenship and Immigration*), 2003 FCA 129 (Rothstein J.A., as he then was, deciding alone) [*Dragan*], this Court decided that prejudice to the respondent is a highly relevant factor in deciding whether a proceeding should be expedited: paragraph 13.

[14] Here, expediting the hearing will no doubt prejudice the respondents. If the hearing were expedited, the respondents would have to prepare significant *Charter* arguments, cross-examine the applicant's expert and any other affiants, as well as prepare their own expert report; all by Monday, April 11, 2011, at the latest. Such work would, in the circumstances, be a significant burden on the respondents.

[15] Further, in *Dragan*, this Court held that the "timetable is extraordinarily short" when the applicant sought an expedited hearing and a decision in 19 days. Here, this reasoning is even more applicable, given the extensive expert evidence and *Charter* argumentation that would need to be produced and the fact that a hearing and a decision would have to occur within 6 days.

[16] I also believe that expediting the hearing could prejudice the applicant. The Supreme Court of Canada has "cautioned against deciding constitutional cases without an adequate evidentiary record": *British Columbia (Attorney General) v. Christie*, 2007 SCC 21 at paragraph 28. Here, given the undoubtedly complex *Charter* arguments that could be made, I do not think an adequate evidentiary (and argumentative) record could be produced within 6 days. The applicant could be prejudiced if her application, which raises issues of considerable importance, had to be decided quickly and without an adequate record.

[17] Further, I believe expediting the hearing would prejudice the public interest. In *RJR-MacDonald v. Canada*, [1994] 1 S.C.R. 311 [*RJR-MacDonald*], a unanimous Supreme Court said

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that in an interlocutory *Charter* proceeding, the public interest may be a reason to grant or refuse the relief sought: at page 344. Here, the applicant is asking this Court to allow an expedited hearing so that the important electoral rights protected by section 3 of the *Charter*, and other difficult *Charter* issues that arise, namely freedom of speech and freedom of the press, can be argued and determined in less than a week. I cannot conclude that it is in the public interest to have such a speedy determination regarding such important issues.

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[18] Third, the application contains a formal defect. The applicant is right to argue that pursuant to paragraph 303(1)*(a)* of the *Federal Courts Rules*, the CRTC need not be named as a respondent in this application. But the Attorney General of Canada should have been named as a respondent in this application. After all, as the respondents argue, section 1 of the *Charter* places the burden of justifying a *Charter* breach on the shoulders of the government. It is not for the Broadcast Consortium to argue that the CRTC Bulletin is a reasonable limit proscribed by law that can be demonstrably justified in a free and democratic society. That argument is the government's to make.

[19] Thus, despite the Department of Justice's apparent disinterest in this case, the Attorney General of Canada should be named as a respondent and should be given the opportunity to adduce evidence and present arguments. The fact that the Attorney General is not a respondent is another consideration weighing against the granting of the applicant's motion.

[20] Fourth, the application for *mandamus* faces significant legal hurdles. The general rule is that a motions judge should not engage in an extensive review of the merits of the case: *RJR-*

MacDonald at page 338. However, one exception to this general rule is when "the result of the interlocutory motion will in effect amount to a final determination of the action": *ibid*.

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[21] This exception applies in part here. The applicant makes clear in her Notice of Application that she is seeking a *mandamus* order, either against the CRTC or the respondents, requiring that the applicant be included in the 2011 federal election leaders' debate. In either case, if her application is not decided by April 12, 2011, it is probably moot. Of course, this Court has the discretion to hear an application even if it is moot: *Borowski v. Canada*, [1989] 1 S.C.R. 342. Still, the Supreme Court has said in *RJR-MacDonald* that a motions judge must consider the merits of a case "when the rights which the applicant seeks to protect can be exercised immediately, or not at all": at page 338. This reasoning applies here because if the hearing is not expedited, then the applicant will not be able to participate in the 2011 debates.

[22] I should note that at the hearing of the motion, counsel for the applicant emphasized that the applicant's choice of remedies may not have been precise, given the extreme speed with which the application was brought. I take this statement to mean that the applicant may be willing to pursue the non-time sensitive aspect of her application, namely, her contention that the Bulletin violates her section 3 *Charter* rights. This aspect of her application will not be rendered moot by this decision.

[23] Still, insofar as the 2011 leaders' debates are concerned, the result of this interlocutory motion amounts to a final determination of her application and, pursuant to *RJR-MacDonald,* I should consider the application's merits.

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[24] Interestingly, *RJR-MacDonald* cites *Trieger v. Canadian Broadcasting Corp.* (1988), 54 D.L.R. (4th) 143 (ONSC) [*Trieger*] as an example of a situation where the motions judge should take a look at the merits of the application or the action before him. *Trieger* pertains to an application in 1988 by the leader of the Green Party for an injunction or a mandatory order requiring the broadcasters to include him in the 1988 leaders' debate. Although Mr. Trieger's situation and that of the applicant are not identical, they are analogous.

[25] In disposing of the motion before him, Campbell J. of the Ontario High Court of Justice expressed considerable doubt as to the chances of success of Mr. Trieger's application for an injunction and, as a result, refused to grant the interim order sought. In particular, I wish to highlight Campbell J.'s remarks at paragraphs 27, 29, 32 to 34 and 36, regarding the possibility of success of Mr. Trieger's injunction:

> 27. The applicants say that their rights to freedom of expression are infringed by the broadcast policy and by the non-enforcement of the broadcast policy. It is by no means clear on this record that their freedom of expression requires a court to force the media to carry their views to the public. It is by no means clear on this record that any citizen's right to vote is impaired by the failure of this group to get the media attention which it sincerely and profoundly believes it requires. To make the orders sought would not promote free public discussion in political debate. It would interfere with free public discussion and political debate by forcing on unwilling participants a certain debate format.
>
> […]
>
> 29. …
> In this case the applicants, in furtherance of their own constitutional rights, seek to interfere with the free right of the public and the other political leaders to uncurtailed political debate. The applicants seek to interfere with the right of the public to hear the scheduled debate and to interfere with the right of the scheduled leaders to

debate whom they want and when they want. To grant the order sought would interfere with the freedom of political debate of this country, would interfere with the freely scheduled debates that are about to proceed on Monday and Tuesday and would interfere with the constitutional right of the media to decide what they think is newsworthy without having newsworthiness dictated to them by any court.

30. I will say little more about the merits of the constitutional arguments raised by the applicants. The applicants in my view have some very considerable legal hurdles to overcome at trial. As to free speech, the right to speak does not necessarily carry with it the right to make someone else listen or the right to make someone else carry one's own message to the public. That point was made by Thurlow C.J. of the Federal Court in *Re New Brunswick Broadcasting Co. Ltd. v. C.R.T.C.* (1984), 13 D.L.R. (4th) 77 at p. 89, 2 C.P.R. (3d) 433, [1984] 2 F.C. 410 (C.A.) [citation omitted]

[…]

32. There is enough doubt on these points to require a full trial to determine whether or not the right to free speech carries with it, in the circumstances of this case, the right to force the media to carry anyone's message to the public.

33. This is a matter that should be decided at trial, not on any summary application of this kind brought upon short notice. It is sufficient to say that whatever the eventual decision of any court on the merits of this case, the applicants' constitutional rights to force what they want from the broadcasters is far from clear.

34. The same considerations apply to the applicants' arguments based on freedom of association and the right to vote. While the applicant relies on these freedoms, the order sought would vary significantly and interfere with the freedom of association of those with whom a debate would be forced. It would, alternatively, interfere with the right of voters to hear and see a scheduled debate which is likely to be of great public interest. I refer also to the interference with the rights and freedoms of the broadcast media under the Charter.

[…]

36. In conclusion I have such significant doubts about the legal, factual and constitutional basis of the applicants' case that I doubt there is in law a serious issue to be tried in the sense of sufficient strength to overbear the rights of the defendants to a trial, to overbear their constitutional rights and possibly the constitutional rights of others. While the public policy issues are serious issues the applicant has not established a serious enough legal basis for its case that it should get the remedy it

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> seeks with no trial and indeed with no proper opportunity for the defendants to meet the case alleged against them.

[26] In my view, Campbell J.'s remarks are entirely apposite in the present matter.

[27] In addition to the above remarks, I would add that this Court has recently reiterated the applicable test for receiving a writ of *mandamus* in *Arsenault v. Canada (Attorney General)*, 2009 FCA 3000 at para.32 [*Arsenault*] – a test which has been approved of by the Supreme Court in *Apotex Inc. v. Canada (Attorney General)*, [1994] 3 S.C.R. 110. This test is quite stringent. In respect of the applicant's claim for a *mandamus* order forcing the CRTC to issue guidelines with a particular content, I note that *Arsenault* holds that "*mandamus* is unavailable to compel the exercise of a "fettered discretion" in a particular way": paragraph 32. In respect of the applicant's claim for a *mandamus* order forcing the broadcasters to allow her to participate in the debates, I note that *Arsenault* requires a "public legal duty to act": *ibid*. Given these tests, I have significant doubts concerning the applicant's ability to obtain the relief sought.

[28] For all of these reasons, I dismissed the applicant's motion to expedite the hearing of her application.

"M. Nadon"

J.A.

2011 FCA 130 (CanLII)

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

2011 FCA 130 (CanLII)

DOCKET:	A-151-11
STYLE OF CAUSE:	ELIZABETH MAY v. CBC/RADIO CANADA et al
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	April 5, 2011
REASONS FOR ORDER BY:	NADON J.A.
DATED:	April 8, 2011

APPEARANCES:

Peter Rosenthal Reni Chang	FOR THE APPLICANT
Philip Tunley	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Roach, Schwartz & Associates, Barristers & Solicitors Toronto, Ontario	FOR THE APPLICANT
Stockwood LLP Barristers Toronto, Ontario	FOR THE RESPONDENTS

Indexed as:

Sierra Club of Canada v. Canada (Minister of Finance)

Between
Atomic Energy of Canada Limited, appellant, and
Sierra Club of Canada, respondent, and
The Minister of Finance of Canada, the Minister of Foreign Affairs of Canada, the Minister of International Trade of Canada and the Attorney General of Canada, respondents

[2000] F.C.J. No. 117

[2000] A.C.F. no 117

95 A.C.W.S. (3d) 9

Court File No. A-699-99

Federal Court of Appeal
Ottawa, Ontario and Vancouver, British Columbia*

Isaac J.

Heard: December 23, 1999 and January 13, 2000.
Judgment: January 21, 2000.

(26 paras.)

Practice -- Appeals -- Procedure -- Factum, case on appeal or appeal book -- Contents of.

Motion by Atomic Energy of Canada for an order that certain materials in the appeal book remain confidential, and for an order expediting the hearing of the appeal and cross-appeal and setting a schedule. Atomic appealed from the dismissal of its application for a confidentiality order. The parties were in agreement on all issues except the contents of the appeal book. Atomic Energy disputed the inclusion of three affidavits. The respondent Sierra Club took the position that they should be included on the ground that they were necessary to dispose of the issues on appeal and cross-appeal.

HELD: Motion allowed in part. The impugned affidavits were to be included in the contents of the appeal book. The affidavits formed part of the background against which the order under appeal was made. They were necessary for the proper disposition of the appeal and cross-appeal. The balance of the relief sought was granted.

Statutes, Regulations and Rules Cited:

Federal Court Act, s. 18.4(1).

Federal Court Rules, Rules 3, 151, 152, 343, 343(3), 344, 364, 365.

Court Note:

* Via teleconference.

Counsel:

J. Brett Ledger, Peter Chapin and Allan Coleman, for the appellant.
Timothy J. Howard, for the respondent, Sierra Club.
Brian Saunders, for the respondent, Ministers and Attorney General of Canada.

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1 ISAAC J. (Reasons for Order):-- Atomic Energy of Canada Limited ("AECL") brought this motion for the following relief:

1. an Order in the form attached as Schedule "A" hereto that certain materials in the Appeal Book be treated as confidential pursuant to Rule 151 and Rule 152 of the Federal Court Rules, 1998;
2. an Order expediting the hearing of the appeal and cross-appeal in this matter to the earliest date available to this Honourable Court on or after February 7, 2000, excluding the dates from February 14, 2000 through March 10, 2000, inclusive, and the dates from March 18 to March 24, 2000, inclusive.
3. an Order setting a schedule for the expediting of the appeal and cross-appeal as follows:

(a) AECL shall file their Memorandum of Fact and Law with respect to their appeal by January 14, 2000;
(b) the Respondents shall file their respective Memoranda of Fact and Law

with respect to AECL's appeal by January 28, 2000;

(c) the Respondent Sierra Club of Canada ("Sierra Club") shall file their Memorandum of Fact and Law with respect to their cross-appeal by January 14, 2000; and

(d) AECL and the Respondents, other than Sierra Club, shall file their respective Memoranda of Fact and Law with respect to Sierra Club's cross-appeal by January 28, 2000.

4. an order pursuant to rule 343(3) of the Federal Court Rules, 1998 determining the content of the Appeal Book for the appeal.
5. such further or other relief as to this Honourable Court may seem just.

2 The motion was heard by conference calls on 23 December 1999 and 13 January 2000 on written submissions supplemented by oral arguments. At the conclusion of oral argument on 13 January, I advised counsel that I would reserve my decision and give my decision early in the week of 17 January, because I wished to give brief reasons for my decision. These are those reasons.

3 As is clear from the facts already recited, the motion is brought in the context of an appeal and cross-appeal from a procedural order made by a Motions Judge in the Trial Division on 26 October 1999, in the course of case management proceedings.

4 The order in appeal reads, in relevant parts:

It is hereby ordered that:

1) AECL has leave to serve and file the Supplementary Affidavit of Simon Pang and the Confidential documents referred to therein, either in their original form or edited to remove information which AECL deems to be confidential.
2) If AECL chooses not to file the Confidential Documents, it has leave to file additional material dealing with the nature and scope of the nuclear regulatory process in the People's Republic of China, both in general terms and as it applies to the project which is the subject of these proceedings, providing such material is served and filed within 60 days of the date of this order. Any objection to the content or relevance of this additional material shall be made to the judge hearing the application.
3) AECL's application for a confidentiality order pursuant to Rule 151 is dismissed.
4) There will be a telephone case management conference following the conclusion of the 60 day period referred to in paragraph 2.

5 This order was made in proceedings commenced by AECL by motion for leave to file an additional affidavit and exhibits and a confidentiality order.

6 For the reasons that he gave the learned Motions Judge granted leave to file supplementary affidavit; but he dismissed the motion for the confidentiality order.

7 AECL has appealed this order dismissing its motion for a confidentiality order. It now seeks an order setting aside paragraphs 1, 2, and 3, except that portion of paragraph 1 which grants leave to file the supplementary affidavits and exhibits. For its part, the respondent Sierra Club of Canada ("Sierra Club") has cross-appealed and asks for a variation of the order in appeal to set aside paragraphs 1, 2, and 4 thereof.

8 Counsel for the parties have agreed on all matters except those respecting the contents of the appeal book. And in respect of those, the issue turns on whether or not the affidavits of:

- Elizabeth May, sworn 20 January 1997;

- Lin Feng sworn 26 January 1999; and,

- Reid Morden sworn 28 January 1999

should be included in the appeal book.

9 Counsel for AECL contends that they should not because they did not form part of the record before the Motions Judge who made the order in appeal and furthermore, they were not referred to in argument before him. With respect to the affidavits of Elizabeth May and Lin Feng, he is supported by counsel for the respondent Ministers and the Attorney General of Canada. As I read his memorandum of fact and law, counsel for the respondent Ministers and the Attorney General of Canada, took no position with respect to the affidavit of Reid Morden. They invoke Rules 343, 344, 364, and 365 of the Federal Court Rules, 1998 and related jurisprudence.

10 For his part, counsel for the respondent Sierra Club contended that they should be included because they are necessary to dispose of the issues in the appeal and cross-appeal. He contends further that the Case Management Judge knew of the existence of these affidavits and his reasons for the order in appeal were informed by his knowledge of their contents, even though they do not form part of the record of the motion which gave rise to his making the order in appeal.

11 For the reasons that follow, I am of the view that the three affidavits should be included in the contents of the appeal book in this appeal and the cross-appeal.

12 Firstly, I start with the proposition, codified in Rule 3 of the Federal Court Rules, 1998, that the rules are to be interpreted and applied so as to secure the just, most expeditious, and least expensive determination of every proceeding on its merits.

13 Secondly, although not unmindful of the provision of the Rules and jurisprudence which counsel for AECL and counsel for the respondent Ministers and the Attorney General of Canada have invoked, I must acknowledge the undisputed fact that the order in appeal was indeed made by

the Case Management Judge who had certainly had cited to him the affidavits of Elizabeth May and of Reid Morden or portions of them. He was certainly aware of the contents of those affidavits and, on any realistic viewing of the adjudicative process, they formed part of the background or context against which he made his order and gave his reasons, both of which are now under attack.

14 Thirdly, in my opinion, these affidavits are necessary for the proper disposition of the issues in this appeal, because they provide the background against or the context in which those issues are to be decided.

15 Let me illustrate. These underlying proceedings were commenced on 20 January 1997 by originating notice of motion and were supported by the affidavit of Elizabeth May.

16 According to the abstract of entries in the Registry's file in these proceedings, the affidavit of Elizabeth May has been the subject of at least nine interlocutory motions of which three were before the Case Management Judge. In light of that circumstance, it seems idle to argue that the May affidavit did not form part of the record before the Motions Judge.

17 The abstract shows that AECL filed the affidavit of Reid Morden on 29 January 1999. It is common ground that AECL did read portions of the affidavit of Reid Morden in argument of its motion before the Case Management Judge. In these circumstances, and where AECL seeks to include those portions of the affidavit of Reid Morden in the appeal book, it seems to me right that the panel hearing the appeal should have before them the whole of Reid Morden's affidavit in order to appreciate the significance of those portions that AECL wishes to include.

18 Finally, in paragraph 21-23 of his written representations on the motion before me, counsel for Sierra Club states that the affidavit of Lin Feng as referred to in argument before the Case Management Judge although it was not included in the motion record filed before him. This assertion was not contradicted by counsel for AECL or for the respondent Ministers and the Attorney General of Canada. I therefore accept the assertions of counsel for the Sierra Club on this point.

19 It seems to me, then, that the just resolution of the appeal and the cross appeal requires that these affidavits be included in the appeal book, and I will so order.

20 As I indicated to counsel in argument, the draft consent order they filed was deficient in several respects. First, it provided that the hearing should be held in camera. From the observations I made to counsel in argument, it is clear that I was not persuaded that such an order ought to be made and I regretfully decline the invitation to make it. Secondly, I am not persuaded that the whole of the memoranda of fact and law should be sealed and marked confidential; but, instead only those portions that were necessarily confidential. Thirdly, the draft order made no provision for access by the Court to the sealed memoranda or other confidential materials. Accordingly, I will refuse the relief requested in paragraph 1 of the order and, in its place will grant an order that will accommodate the interests of all parties and the needs of the Court.

21 The relief claimed in paragraphs 2 and 3 is granted with the change in dates necessitated by the change in the date of my order and by my discussion with counsel.

22 I do not wish to leave these reasons without remarking on the fact that a proceeding commenced by judicial review on 20 January 1997 has not yet been resolved on 20 January 2000. And, according to the abstract of the proceedings, it will probably not be resolved until the period commencing on 30 October and ending on 8 November 2000, these being the dates fixed provisionally for the hearing of the application.

23 It is my respectful view that such a long delay is inconsistent with the injunction in subsection 18.4(1) of the Federal Court Act which reads:

> 18.4(1) Subject to subsection (2), an application or reference to the Trial Division under any of sections 18.1 to 18.3 shall be heard and determined without delay and in a summary way.
> [Emphasis added.]

24 This subsection imposes obligations upon counsel for the parties and upon the Court. It imposes upon counsel the obligation to move litigation along at a pace that is consistent with the true interests of their respective clients. The Court's obligation, on the other hand, is to ensure reasonable compliance by counsel with the injunction.

25 Whatever the reasons for the long delay here, it cannot reasonably be said that either the Court or counsel has heeded the injunction of the subsection. It seems to me exceedingly difficult to argue that a proceeding in which there have been more than 12 interlocutory motions before Prothonotaries and Motions Judges, and an appeal, is a proceeding that is being dealt with in a summary way or, that an interval of almost four years between commencement and final disposition at first instance can be characterized as one that is being dealt with "without delay".

26 Costs of the motion will be in the cause.

ISAAC J.

cp/d/qlndn/qlhcs

Federal Court  Cour fédérale

Date: 20110428

Docket: T-696-11

Citation: 2011 FC 498

2011 FC 498 (CanLII)

Ottawa, Ontario, April 28, 2011

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

KATHLEEN TROTTER

Applicant

and

AUDITOR GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] The application that is before this Court addresses issues that are of the utmost importance to our democracy. In issue are the scope and breadth of Charter rights, as well as the Auditor General's interpretation of its statutory mandate.

[2] As it will be seen, this Order is not about the Court unduly refusing to "join the political fray" or taking an unjustifiably formalistic approach. It is about the responsible acquittal of judicial duties in interpreting the Constitution, something expediting the proceedings cannot accomplish. If

this application would have been served and filed in the week following April 11, 2011, the Court would have dealt with the matter.

[3] At this stage, the Court is asked to expedite the application and render judgment before the general election of May 2, 2011. This application seeks to make public the Auditor General's report on the Government's G8 Infrastructure Fund. This report was to be tabled before Parliament on April 5, 2011, had a general election not been called.

[4] The merits of seeking the publication of the Auditor General's report are not the questions that are incumbent upon the Court to resolve at this stage. Rather, the real question in a motion for an expedited hearing is illustrated by the criteria the jurisprudence has established as required to warrant an expedited hearing.

[5] Some of these factors have been set out in *Canada (Minister of Citizenship and Immigration) v Dragan*, 2003 FCA 139, as the following: (a) Harm will result if the hearing is not expedited; (b) A timetable can be agreed upon which is convenient to the Court and counsel for the parties for the hearing of the appeal; and (c) the appeal will not be heard to the detriment of others whose matters have already been scheduled for hearing. Courts have also recognized other factors: whether the Application becomes moot if not heard expeditiously; and whether the matter is urgent (*Canadian Wheat Board v Canada (Attorney General)*, 2007 FC 39).

2011 FC 498 (CanLII)

[6] Furthermore, the public interest in proceeding, and the Respondent's prejudice have been stated anew recently as factors to be considered by the Court when assessing if an application should proceed on an expedited basis (*May v CBC/Radio Canada*, 2011 FCA 130).

[7] Inherent to all these factors is the nature of the application itself. In this respect, it should be noted that Charter applications must be given the full weighing they deserve. Surely, constitutional issues deserve complete and detailed materials for the Court, as guardian of the rule of law, to analyze the issues at hand and exercise its judicial duties. This is what is implied by the Supreme Court when it forewarns courts on proceeding on constitutional matters without adequate evidentiary records before them (*British Columbia (Attorney General) v Christie*, 2007 SCC 21, at para 28).

[8] Firstly, it can be said that the Attorney General should be named as a Respondent in the Application. Counsel for the Applicant indicated that the materials were served to the Attorney General as well as the current Respondent. Counsel for the Applicant also argued that, in the case at bar, the question was not one of whether the *Auditor General Act*, RSC 1985, c A-17 is unconstitutional in light of alleged Charter breaches. Rather, it is argued that the matter is whether the Auditor General incorrectly interpreted the statute, and whether Charter values contained in sections 2(b) and 3 should have been interpretative aids in the exercise of "her discretion" (if she has any) to arrive at a proper interpretation of her legislative mandate.

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[9] With respect, framing the issue and deliberately confining it in the matter suggested by the Applicant is a matter to be determined by the determination of the application itself. The debate should not be unduly constrained in the motion for an expedited hearing.

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[10] Also, the Attorney General may wish to meaningfully participate in the debates arising from the application. Very recently, Justice Marc Nadon of the Federal Court of Appeal has stated that justifying the constitutionality of laws remains the duty of the Attorney General (*May*, above, at para 18).

[11] Whether the application truly challenges the constitutionality of the law is not something that is clear at this stage, as the Applicant's written and oral representations made by counsel considerably differ in this respect. This also is not favourable to proceeding on an expedited basis, as the piecemeal submissions provided thus far differ as to whether remedies are sought under section 24(1) of the Charter or under other declaratory grounds.

[12] In the present matter, the timeframe in which the Applicant seeks to have the matter adjudicated is extremely brief. The Application itself was filed on the morning of Tuesday, April 26, 2011. The motion for the application to proceed expeditiously was filed in the late afternoon on the same day. The Court held the hearing on the motion on Wednesday, April 27, 2011. Thus, some steps remain unheeded: the Respondent must file a complete and detailed response to the application itself, the Attorney General may participate; the Applicant could file a reply memorandum, though likely would not; a hearing where all the parties are to be heard must be held; careful research and analysis must be conducted by the Court, etc. Also, the Respondent's position

may prove to be more nuanced and detailed than what counsel for the Applicant expects and it would be unfair, if not unbecoming, for the Court to proceed on this assumption.

[13] It should also be stated that the Respondent alleges that her office will suffer prejudice from an expedited proceeding.

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[14] In any event, the Court cannot anticipate and constrain the questions arising from the Application and reduce them prematurely, as the Applicant would like to. Furthermore, even if the Court was to consider favourably all elements of the Application, it is questionable whether this could be done before Monday, May 2, 2011. This holds true without even considering the possible appeal and the likely motion for a stay of the execution of a favourable decision from this Court. Consequently, the relief sought may not even be granted should a favourable decision be made on an expedited basis.

[15] This situation would have been different had the Applicant not filed her application less than a week before the election. The Auditor General's refusal has been public and unequivocal since at least April 11, 2011.

[16] The inherent fairness of the proceedings is paramount. All parties involved should benefit from timely and professional advice from counsel. In the delays by which this complex application is suggested to proceed, it is questionable whether the Court would benefit from an evidentiary record that is of the level required for the proper assessment of the constitutional questions arising from the application. The materials filed must meaningfully address the issues at hand, something

that 24 to 48 hours may well prove insufficient for counsel to do so. This is notwithstanding the Court's own analysis that is to be as complete, considered and reasoned as judicial duties and the Constitution require.

[17] In citing the Supreme Court case of *RJR MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311, Justice Nadon recognized in *May*, above, that the public interest in seeing the matter expedited should be considered.

[18] In this respect, counsel for the Applicant has argued that the public interest in the disclosure of the Auditor General's reports must prevail. Counsel has argued that the exercise of our democratic rights is contingent on adequate information, something the report would provide.

[19] While this could prove true in principle, in practice, the public interest is not well served in shortcutting the considered judicial process required for the weighing of constitutional matters. It is said that "haste makes waste". Surely, "waste" in constitutional matters is not a possibility that the Court can validly accept if it is to acquit itself of its judicial duties. The consequences of proceeding on an expedited basis could prove to be much broader than intended, again, for a remedy that may not even be ultimately available to the Applicant before Monday, May 2, 2011 in light of the appeals process and a possible stay of the execution of a favourable judgment.

[20] The alleged urgency of the matter should not blind the Court of the task at hand: deciding on the Auditor General's duty towards the public based on Charter values, as argued orally before the Court on April 27, 2011, or on the alleged breach of Charter rights, as opined in the written

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representations of the Applicant. Whatever the question ultimately becomes, the extremely limited timeframe in which the Application is asked to proceed is not sufficient. Urgency should not trump the careful weighing of our Constitution, whether it is an "interpretative tool" or the source of the recourse itself. Even the Applicant's record is unclear in respect to what the grounds of the application are. Is it a *mandamus* application? Is it a judicial review of the Auditor General's decision? Is it a stand-alone action based on section 24(1) of the Charter? This wholly determines the remedies available and the Court's jurisdiction. Resolving this matter is essential and cannot proceed on the extremely short timeframe the Applicant is asking for.

2011 FC 498 (CanLII)

[21] As for mootness, this Court believes that despite the general election of May 2, 2011, the underlying questions of law remain on the table, so to speak. However, that ultimately will be a question for the Court deciding the underlying application and whether, if the general election is the focal point of the application, the Court's residual discretion to hear the matter should be exercised.

[22] Thus, it can be said that there is an arguable public interest in having the Auditor General's report. It is a final report revised by her Office, apparently with ongoing consultations with members of the Executive currently seeking re-election. A fairness argument in this respect could be made. Furthermore, the party leaders of the four main parties have acknowledged publicly their wish to see the report made public. However, the public interest is not better served in the event that a favourable but rushed decision cannot be enforced before May 2, 2011. The public interest is not better served by having the Court decide on the drop of a dime an important constitutional question. Hence, the Court cannot grant the motion to hear the Application on an expedited basis for the reasons described above.

[23] At this stage, no costs have been sought therefore none will be allowed.

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ORDER

THIS COURT ORDERS that the motion to expedite the hearing of the application is denied.

"Simon Noël"

Judge

2011 FC 498 (CanLII)

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-696-11
STYLE OF CAUSE:	KATHLEEN TROTTER V AUDITOR GENERAL OF CANADA
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	April 27, 2011
REASONS FOR ORDER AND ORDER:	NOËL S. J.
DATED:	April 28, 2011

APPEARANCES:

Frank Addario	FOR THE APPLICANT
Andrew McKenna, Andrew Hayes, Todd J. Burke	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Sack Goldblatt Mitchell LLP Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Gowling Lafleur Henderson LLP Barristers and Solicitors Ottawa, Ontario	FOR THE RESPONDENT

2011 FC 498 (CanLII)

Date: 20070104

Docket: A-334-06

Citation: 2007 FCA 3

2007 FCA 3 (CanLII)

Present: **NOËL J.A.**

BETWEEN:

TOMASZ WINNICKI

Appellant
(Responding Party)

and

CANADIAN HUMAN RIGHTS COMMISSION

Respondent
(Moving Party)

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on January 4, 2007.

REASONS FOR ORDER BY: NOËL J.A.

Date: 20070104

Docket: A-334-06

Citation: 2007 FCA 3

2007 FCA 3 (CanLII)

Present: **NOËL J.A.**

BETWEEN:

TOMASZ WINNICKI

Appellant
(Responding Party)

and

CANADIAN HUMAN RIGHTS COMMISSION

Respondent
(Moving Party)

REASONS FOR ORDER

NOËL J.A.

[1] I am seized with an ancillary motion to shorten the time within which the responding party must respond to the Canadian Human Rights Commission's (the Commission) application to set aside the interim stay of the contempt order issued by von Finckenstein J. on July 12, 2006 and the imprisonment thereby ordered. Specifically, the Commission requests that contrary to what the Rules provide, account be taken of the Christmas holidays in computing this delay.

[2] The Commission brings this motion so that its application to set aside the stay can be heard (and presumably disposed of) before January 16, 2007, that is the day on which the appeal from von

Finckenstein J.'s contempt order, and in particular from the prison sentence which he imposed, is to be heard by this Court (see motion material, written representations, para. 33).

[3] Based on the record before me, the Commission has been in a position to proceed with its application since November 24, 2006, the day of the alleged breach of the order staying the contempt order. For reasons that are unexplained, the application was not brought until December 22, 2006. The Commission's desire to expedite the application only arises because it failed to present the application earlier.

[4] In the circumstances and given the significance of the decision sought from the perspective of the responding party, the Court is not inclined to modify the delays prescribed by the Rule.

[5] Motion denied.

"Marc Noël"

J.A.

2007 FCA 3 (CanLII)

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

2007 FCA 3 (CanLII)

DOCKET:	A-334-06
STYLE OF CAUSE:	TOMASZ WINNICKI and CANADIAN HUMAN RIGHTS COMMISSION

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:	NOËL J.A.
DATED:	JANUARY 4, 2007

WRITTEN REPRESENTATIONS BY:

James Foord	FOR THE APPELLANT
Judith Parisien & Joy Noonan	FOR THE RESPONDENT

SOLICITORS OF RECORD:

FOORD, MURRAY Ottawa (Ontario)	FOR THE APPELLANT
HEENAN BLAIKIE LLP Ottawa (Ontario)	FOR THE RESPONDENT

PARLINFO

FORTY-FIRST

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CURRENT PARLIAMENT

Term (yyyy.mm.dd): 2011.06.02 -

Duration: 1482 days (4 years, 21 days)

Government Type: Majority Government

Government Party: Conservative Party of Canada

Number of Sessions: 2

Date of General Election: 2011.05.02

Prime Minister:
- Harper, Stephen (2006.02.06 -)

Leader of the Official Opposition:
- Mulcair, Thomas J. (2012.03.24 -)
- Turmel, Nycole (2011.08.23 - 2012.03.23)
- Layton, Jack (2011.05.02 - 2011.08.22)

Party Standings In The Senate

LIST OF

Date	C.P.C.	Lib.	Ind.	P.C.	Ind. P.C.	Vacant	Total
2015.06.17	49	29	6	0	1	20	105
2015.06.04	50	29	5	0	1	20	105
2015.04.23	51	29	4	0	1	20	105
2015.04.17	52	29	4	0	1	19	105
2015.01.31	52	30	4	0	1	18	105
2014.12.15	52	30	5	0	1	17	105
2014.12.01	53	30	5	0	1	16	105
2014.11.27	53	31	5	0	1	15	105
2014.08.10	54	31	5	0	1	14	105
2014.07.25	55	31	5	0	1	13	105
2014.07.17	55	32	5	0	1	12	105
2014.06.30	56	32	5	0	1	11	105
2014.06.17	56	31	6	0	1	11	105
2014.06.15	56	32	6	0	1	10	105
2013.11.30	57	32	6	0	1	9	105
2013.11.22	59	32	6	0	1	7	105
2013.11.16	59	33	5	0	1	7	105
2013.08.26	60	33	5	0	1	6	105
2013.08.02	60	33	6	0	1	5	105
2013.05.17	60	35	6	0	1	3	105
2013.05.16	61	35	5	0	1	3	105
2013.05.11	62	35	4	0	1	3	105
2013.05.10	63	35	4	0	1	2	105
2013.03.25	63	36	3	0	1	2	105
2013.03.22	62	36	3	0	1	3	105
2013.03.16	63	36	3	0	1	2	105
2013.02.11	64	36	3	0	1	1	105
2013.02.07	64	36	3	1	0	1	105
2013.01.25	65	36	2	1	0	1	105
2013.01.18	60	36	2	1	0	6	105
2013.01.10	60	37	2	1	0	5	105
2012.11.06	60	38	2	1	0	4	105
2012.10.19	61	38	2	1	0	3	105
2012.09.23	61	39	2	1	0	2	105
2012.09.17	62	39	2	1	0	1	105
2012.09.06	62	40	2	1	0	0	105
2012.07.21	57	40	2	1	0	5	105
2012.06.30	58	40	2	1	0	4	105
2012.06.18	59	40	2	1	0	3	105

2012.02.20	59	41	2	1	0	2	105
2012.02.09	58	41	2	1	0	3	105
2012.02.06	59	41	2	1	0	2	105
2012.01.17	60	41	2	1	0	1	105
2012.01.06	59	41	2	1	0	2	105
2011.12.17	54	41	2	1	0	7	105
2011.12.02	54	42	2	1	0	6	105
2011.10.17	54	43	2	1	0	5	105
2011.09.26	54	44	2	1	0	4	105
2011.09.21	54	44	2	2	0	3	105
2011.09.07	55	44	2	2	0	2	105
2011.06.13	55	45	2	2	0	1	105
2011.05.25	54	45	2	2	0	2	105
2011.05.13	52	45	2	2	0	4	105
2011.05.02 (Election)	52	46	2	2	0	3	105

CHANGES TO PARTY STANDINGS

Date	Change
2015.06.17	Senator: Meredith, Don Province / Territory: Ontario Political Affiliation: Conservative Party of Canada Political Affiliation Change
2015.06.04	Senator: Boisvenu, Pierre-Hugues Province / Territory: Quebec Political Affiliation: Conservative Party of Canada Political Affiliation Change
2015.04.23	Senator: Nolin, Pierre Claude Province / Territory: Quebec Political Affiliation: Conservative Party of Canada Passed away
2015.04.17	Senator: Charette-Poulin, Marie-P. Province / Territory: Ontario Political Affiliation: Liberal Party of Canada Resignation
2015.01.31	Senator: Rivest, Jean-Claude Province / Territory: Quebec Political Affiliation: Independent Resignation
2014.12.15	Senator: Seth, Asha Province / Territory: Ontario Political Affiliation: Conservative Party of Canada Retirement
2014.12.01	Senator: Robichaud, Fernand Province / Territory: New Brunswick Political Affiliation: Liberal Party of Canada Retirement
2014.11.27	Senator: Kinsella, Noël A. Province / Territory: New Brunswick Political Affiliation: Conservative Party of Canada Resignation
2014.08.10	Senator: Buth, JoAnne L. Province / Territory: Manitoba Political Affiliation: Conservative Party of Canada Resignation
2014.07.25	Senator: Callbeck, Catherine S. Province / Territory: Prince Edward Island

	Political Affiliation: Liberal Party of Canada Retirement
2014.07.17	Senator: Champagne, Andrée Province / Territory: Quebec Political Affiliation: Conservative Party of Canada Retirement
2014.06.30	Senator: Kenny, Colin Province / Territory: Ontario Political Affiliation: Independent Political Affiliation Change
2014.06.17	Senator: Dallaire, Roméo A. Province / Territory: Quebec Political Affiliation: Liberal Party of Canada Resignation
2014.06.15	Senator: Segal, Hugh Province / Territory: Ontario Political Affiliation: Conservative Party of Canada Resignation
2013.11.30	Senator: Comeau, Gerald J. Province / Territory: Nova Scotia Political Affiliation: Conservative Party of Canada Resignation
2013.11.30	Senator: Braley, David Province / Territory: Ontario Political Affiliation: Conservative Party of Canada Resignation
2013.11.22	Senator: Kenny, Colin Province / Territory: Ontario Political Affiliation: Liberal Party of Canada Political Affiliation Change
2013.11.16	Senator: Oliver, Donald H. Province / Territory: Nova Scotia Political Affiliation: Conservative Party of Canada Retirement
2013.08.26	Senator: Harb, Mac Province / Territory: Ontario Political Affiliation: Independent Resignation
2013.08.02	Senator: De Bané, Pierre Province / Territory: Quebec Political Affiliation: Liberal Party of Canada Retirement
2013.08.02	Senator: Zimmer, Rod A. A. Province / Territory: Manitoba Political Affiliation: Liberal Party of Canada Resignation
2013.05.17	Senator: Wallin, Pamela Province / Territory: Saskatchewan Political Affiliation: Conservative Party of Canada Political Affiliation Change

2013.05.16	Senator: Duffy, Michael Province / Territory: Prince Edward Island Political Affiliation: Conservative Party of Canada Political Affiliation Change
2013.05.11	Senator: Finley, Doug Province / Territory: Ontario Political Affiliation: Conservative Party of Canada Death
2013.05.10	Senator: Harb, Mac Province / Territory: Ontario Political Affiliation: Liberal Party of Canada Political Affiliation Change
2013.03.25	Senator: Tannas, Scott Province / Territory: Alberta Political Affiliation: Conservative Party of Canada Appointed
2013.03.22	Senator: Brown, Bert Province / Territory: Alberta Political Affiliation: Conservative Party of Canada Retirement
2013.03.16	Senator: Stratton, Terry Province / Territory: Manitoba Political Affiliation: Conservative Party of Canada Retirement
2013.02.11	Senator: McCoy, Elaine Province / Territory: Alberta Political Affiliation: Progressive Conservative Party Political Affiliation Change
2013.02.07	Senator: Brazeau, Patrick Province / Territory: Quebec Political Affiliation: Conservative Party of Canada Political Affiliation Change
2013.01.25	Senator: Oh, Victor Province / Territory: Ontario Political Affiliation: Conservative Party of Canada Appointed
2013.01.25	Senator: Batters, Denise Province / Territory: Saskatchewan Political Affiliation: Conservative Party of Canada Appointed
2013.01.25	Senator: Wells, David M. Province / Territory: Newfoundland and Labrador Political Affiliation: Conservative Party of Canada Appointed
2013.01.25	Senator: Beyak, Lynn Province / Territory: Ontario Political Affiliation: Conservative Party of Canada Appointed
2013.01.25	Senator: Black, Douglas Province / Territory: Alberta Political Affiliation: Conservative Party of Canada

	Appointed
2013.01.18	Senator: Fairbairn, Joyce Province / Territory: Alberta Political Affiliation: Liberal Party of Canada Resignation
2013.01.10	Senator: Mahovlich, Frank W. Province / Territory: Ontario Political Affiliation: Liberal Party of Canada Retirement
2012.11.06	Senator: St. Germain, Gerry Province / Territory: British Columbia Political Affiliation: Conservative Party of Canada Retirement
2012.10.19	Senator: Peterson, Robert W. Province / Territory: Saskatchewan Political Affiliation: Liberal Party of Canada Retirement
2012.09.23	Senator: Cochrane, Ethel M. Province / Territory: Newfoundland and Labrador Political Affiliation: Conservative Party of Canada Retirement
2012.09.17	Senator: Poy, Vivienne Province / Territory: Ontario Political Affiliation: Liberal Party of Canada Resignation
2012.09.06	Senator: Bellemare, Diane Province / Territory: Quebec Political Affiliation: Conservative Party of Canada Appointed
2012.09.06	Senator: Ngo, Thanh Hai Province / Territory: Ontario Political Affiliation: Conservative Party of Canada Appointed
2012.09.06	Senator: Enverga, Jr., Tobias C. Province / Territory: Ontario Political Affiliation: Conservative Party of Canada Appointed
2012.09.06	Senator: McInnis, Thomas Johnson Province / Territory: Nova Scotia Political Affiliation: Conservative Party of Canada Appointed
2012.09.06	Senator: McIntyre, Paul E. Province / Territory: New Brunswick Political Affiliation: Conservative Party of Canada Appointed
2012.07.21	Senator: Angus, W. David Province / Territory: Quebec Political Affiliation: Conservative Party of Canada Retirement
2012.06.30	Senator: Di Nino, Consiglio Province / Territory: Ontario Political Affiliation: Conservative Party of Canada

	Resignation
2012.06.18	Senator: Losier-Cool, Rose-Marie Province / Territory: New Brunswick Political Affiliation: Liberal Party of Canada Retirement
2012.02.20	Senator: White, Vernon Province / Territory: Ontario Political Affiliation: Conservative Party of Canada Appointed
2012.02.09	Senator: Dickson, Fred Province / Territory: Nova Scotia Political Affiliation: Conservative Party of Canada Death
2012.02.06	Senator: Meighen, Michael A. Province / Territory: Ontario (Division) Political Affiliation: Conservative Party of Canada Resignation
2012.01.17	Senator: Dagenais, Jean-Guy Province / Territory: Quebec Political Affiliation: Conservative Party of Canada Appointed
2012.01.06	Senator: Doyle, Norman E. Province / Territory: Newfoundland and Labrador Political Affiliation: Conservative Party of Canada Appointed
2012.01.06	Senator: Unger, Betty E. Province / Territory: Alberta Political Affiliation: Conservative Party of Canada Appointed
2012.01.06	Senator: Seth, Asha Province / Territory: Ontario Political Affiliation: Conservative Party of Canada Appointed
2012.01.06	Senator: Maltais, Ghislain Province / Territory: Quebec Political Affiliation: Conservative Party of Canada Appointed
2012.01.06	Senator: Buth, JoAnne L. Province / Territory: Manitoba Political Affiliation: Conservative Party of Canada Appointed
2011.12.17	Senator: Banks, Tommy Province / Territory: Alberta Political Affiliation: Liberal Party of Canada Retirement
2011.12.02	Senator: Fox, Francis Province / Territory: Quebec Political Affiliation: Liberal Party of Canada Resignation
2011.10.17	Senator: Carstairs, Sharon

	Province / Territory: Manitoba Political Affiliation: Liberal Party of Canada Resignation
2011.09.26	Senator: Murray, Lowell Province / Territory: Ontario Political Affiliation: Progressive Conservative Party Retirement
2011.09.21	Senator: Kochhar, Vim Province / Territory: Ontario Political Affiliation: Conservative Party of Canada Retirement
2011.09.07	Senator: Pépin, Lucie Province / Territory: Quebec Political Affiliation: Liberal Party of Canada Retirement
2011.06.13	Senator: Verner, Josée Province / Territory: Quebec Political Affiliation: Conservative Party of Canada Appointed
2011.05.25	Senator: Manning, Fabian Province / Territory: Newfoundland and Labrador Political Affiliation: Conservative Party of Canada Appointed
2011.05.25	Senator: Smith, Larry Province / Territory: Quebec Political Affiliation: Conservative Party of Canada Appointed
2011.05.13	Senator: Rompkey, Bill Province / Territory: Newfoundland and Labrador Political Affiliation: Liberal Party of Canada Retirement

Senators by Date of Retirement

Contact information | Standings in the Senate

Sort By: Please select **Go to:** Ascending Descending

Name	Affiliation	Province (Designation)	Date of nomination	Date of retirement	Appointed on the advice of:
Fortin-Duplessis, Suzanne	C	Quebec (Rougemont)	2009-01-14	2015-06-30	Harper (C)
LeBreton, Marjory	C	Ontario	1993-06-18	2015-07-04	Mulroney (PC)
Gerstein, Irving	C	Ontario	2009-01-02	2016-02-10	Harper (C)
Hervieux-Payette, Céline	Lib.	Quebec (Bedford)	1995-03-21	2016-04-22	Chrétien (Lib.)
Smith, David P.	Lib.	Ontario (Cobourg)	2002-06-25	2016-05-16	Chrétien (Lib.)
Rivard, Michel	C	Quebec (The Laurentides)	2009-01-02	2016-08-07	Harper (C)
Nancy Ruth	C	Ontario (Cluny)	2005-03-24	2017-01-06	Martin (Lib.)
Moore, Wilfred P.	Lib.	Nova Scotia (Stanhope St. / South Shore)	1996-09-26	2017-01-14	Chrétien (Lib.)
Cowan, James S.	Lib.	Nova Scotia	2005-03-24	2017-01-22	Martin (Lib.)
Chaput, Maria	Lib.	Manitoba	2002-12-12	2017-05-07	Chrétien (Lib.)
Runciman, Bob	C	Ontario (Thousand Islands and Rideau Lakes)	2010-01-29	2017-08-10	Harper (C)
Baker, George	Lib.	Newfoundland and Labrador	2002-03-26	2017-09-04	Chrétien (Lib.)
Hubley, Elizabeth	Lib.	Prince Edward Island	2001-03-08	2017-09-08	Chrétien (Lib.)
Ogilvie, Kelvin Kenneth	C	Nova Scotia (Annapolis Valley - Hants)	2009-08-27	2017-11-06	Harper (C)
Merchant, Pana	Lib.	Saskatchewan	2002-12-12	2018-04-02	Chrétien (Lib.)
Raine, Nancy Greene	C	British Columbia (Thompson-Okanagan-Kootenay)	2009-01-02	2018-05-11	Harper (C)
Cools, Anne C.	Ind.	Ontario (Toronto Centre-York)	1984-01-13	2018-08-12	Trudeau (Lib.)
Unger, Betty E.	C	Alberta	2012-01-06	2018-08-21	Harper (C)
Eggleton, Art	Lib.	Ontario	2005-03-24	2018-09-29	Martin (Lib.)
Sibbeston, Nick G.	Lib.	Northwest Territories	1999-09-02	2018-11-21	Chrétien (Lib.)
Kenny, Colin	Lib.	Ontario (Rideau)	1984-06-29	2018-12-10	Trudeau (Lib.)
Maltais, Ghislain	C	Quebec (Shawinegan)	2012-01-06	2019-04-22	Harper (C)
Watt, Charlie	Lib.	Quebec (Inkerman)	1984-01-16	2019-06-29	Trudeau (Lib.)
Andreychuk, Raynell	C	Saskatchewan	1993-03-11	2019-08-14	Mulroney (PC)
Demers, Jacques	C	Quebec (Rigaud)	2009-08-27	2019-08-25	Harper (C)

Fraser, Joan	Lib.	Quebec (De Lorimier)	1998-09-17	2019-10-12	Chrétien (Lib.)
McIntyre, Paul E.	C	New Brunswick	2012-09-06	2019-11-02	Harper (C)
Neufeld, Richard	C	British Columbia	2009-01-02	2019-11-06	Harper (C)
Eaton, Nicole	C	Ontario	2009-01-02	2020-01-21	Harper (C)
Day, Joseph A.	Lib.	New Brunswick (Saint John-Kennebecasis)	2001-10-04	2020-01-24	Chrétien (Lib.)
Joyal, Serge	Lib.	Quebec (Kennebec)	1997-11-26	2020-02-01	Chrétien (Lib.)
Tkachuk, David	C	Saskatchewan	1993-06-08	2020-02-18	Mulroney (PC)
McInnis, Thomas Johnson	C	Nova Scotia	2012-09-06	2020-04-09	Harper (C)
Dyck, Lillian Eva	Lib.	Saskatchewan	2005-03-24	2020-08-24	Martin (Lib.)
Doyle, Norman E.	C	Newfoundland and Labrador	2012-01-06	2020-11-11	Harper (C)
McCoy, Elaine	Ind. (PC)	Alberta	2005-03-24	2021-03-07	Martin (Lib.)
Johnson, Janis G.	C	Manitoba	1990-09-27	2021-04-27	Mulroney (PC)
Duffy, Michael	Ind.	Prince Edward Island (Cavendish)	2009-01-02	2021-05-27	Harper (C)
Munson, Jim	Lib.	Ontario (Ottawa / Rideau Canal)	2003-12-10	2021-07-14	Chrétien (Lib.)
Stewart Olsen, Carolyn	C	New Brunswick	2009-08-27	2021-07-27	Harper (C)
Ngo, Thanh Hai	C	Ontario	2012-09-06	2022-01-03	Harper (C)
Mercer, Terry M.	Lib.	Nova Scotia (Northend Halifax)	2003-11-07	2022-05-06	Chrétien (Lib.)
Tardif, Claudette	Lib.	Alberta	2005-03-24	2022-07-27	Martin (Lib.)
Campbell, Larry W.	Lib.	British Columbia	2005-08-02	2023-02-28	Martin (Lib.)
Lang, Daniel	C	Yukon	2009-01-02	2023-04-03	Harper (C)
Lovelace Nicholas, Sandra M.	Lib.	New Brunswick	2005-09-21	2023-04-15	Martin (Lib.)
Furey, George	Lib.	Newfoundland and Labrador	1999-08-11	2023-05-12	Chrétien (Lib.)
Patterson, Dennis Glen	C	Nunavut	2009-08-27	2023-12-30	Harper (C)
Boisvenu, Pierre-Hugues	Ind.	Quebec (La Salle)	2010-01-29	2024-02-12	Harper (C)
Beyak, Lynn	C	Ontario	2013-01-25	2024-02-18	Harper (C)
Wallace, John D.	C	New Brunswick (Rothesay)	2009-01-02	2024-03-26	Harper (C)
Mockler, Percy	C	New Brunswick	2009-01-02	2024-04-14	Harper (C)
Oh, Victor	C	Ontario (Mississauga)	2013-01-25	2024-06-10	Harper (C)
Jaffer, Mobina S.B.	Lib.	British Columbia	2001-06-13	2024-08-20	Chrétien (Lib.)
Dawson, Dennis	Lib.	Quebec (Lauzon)	2005-08-02	2024-09-28	Martin (Lib.)
Bellemare, Diane	C	Quebec (Alma)	2012-09-06	2024-10-13	Harper (C)
Greene, Stephen	C	Nova Scotia (Halifax - The Citadel)	2009-01-02	2024-12-08	Harper (C)
Dagenais, Jean-Guy	C	Quebec (Victoria)	2012-01-17	2025-02-02	Harper (C)
Plett, Donald Neil	C	Manitoba (Landmark)	2009-08-27	2025-05-14	Harper (C)
Cordy, Jane	Lib.	Nova Scotia	2000-06-09	2025-07-02	Chrétien (Lib.)
Seidman, Judith G.	C	Quebec (De la Durantaye)	2009-08-27	2025-09-01	Harper (C)
Smith, Larry	C	Quebec (Saurel)	2011-05-25 [1]	2026-04-28	Harper (C)
Mitchell, Grant	Lib.	Alberta	2005-03-24	2026-07-19	Martin (Lib.)
Marshall, Elizabeth	C	Newfoundland and Labrador	2010-01-29	2026-09-07	Harper (C)
Massicotte, Paul J.	Lib.	Quebec (De Lanaudière)	2003-06-26	2026-09-10	Chrétien (Lib.)
Ataullahjan, Salma	C	Ontario (Toronto)	2010-07-09	2027-04-29	Harper (C)
Black, Douglas	C	Alberta	2013-01-25	2027-05-10	Harper (C)

Wallin, Pamela	Ind.	Saskatchewan	2009-01-02	2028-04-10	Harper (C)
Poirier, Rose-May	C	New Brunswick (Saint-Louis-de-Kent)	2010-02-28	2029-03-02	Harper (C)
Downe, Percy E.	Lib.	Prince Edward Island (Charlottetown)	2003-06-26	2029-07-08	Chrétien (Lib.)
MacDonald, Michael L.	C	Nova Scotia (Cape Breton)	2009-01-02	2030-05-04	Harper (C)
Enverga, Tobias C. Jr.	C	Ontario	2012-09-06	2030-12-02	Harper (C)
Ringuette, Pierrette	Lib.	New Brunswick	2002-12-12	2030-12-31	Chrétien (Lib.)
White, Vernon	C	Ontario	2012-02-20	2034-02-21	Harper (C)
Verner, Josée	C	Quebec (Montarville)	2011-06-13	2034-12-30	Harper (C)
Tannas, Scott	C	Alberta	2013-03-25	2037-02-25	Harper (C)
Wells, David M.	C	Newfoundland and Labrador	2013-01-25	2037-02-28	Harper (C)
Frum, Linda	C	Ontario	2009-08-27	2038-01-13	Harper (C)
Manning, Fabian	C	Newfoundland and Labrador	2011-05-25 [2]	2039-05-21	Harper (C)
Meredith, Don	Ind.	Ontario	2010-12-18	2039-07-13	Harper (C)
Carignan, Claude	C	Quebec (Mille Isles)	2009-08-27	2039-12-04	Harper (C)
Martin, Yonah	C	British Columbia	2009-01-02	2040-04-11	Harper (C)
Housakos, Leo	C	Quebec (Wellington)	2009-01-08	2043-01-10	Harper (C)
Batters, Denise	C	Saskatchewan	2013-01-25	2045-06-18	Harper (C)
Brazeau, Patrick	Ind.	Quebec (Repentigny)	2009-01-08	2049-11-11	Harper (C)

[1] Smith, Larry was also a senator from 2010-12-18 to 2011-03-25
[2] Manning, Fabian was also a senator from 2009-01-02 to 2011-03-28

©Senate of Canada

Federal Court  Cour fédérale

November 18, 2010

NOTICE TO THE PARTIES AND THE PROFESSION

Early Hearing Dates for Applications in the Federal Court

The goal of the Federal Court is to be ready to hear applications as soon as litigants are ready.

Applications for judicial review in the Federal Court are to be heard and determined in a summary way. The inherent flexibility of the *Federal Courts Rules*, enables the Court to determine applications in an expeditious, fair and cost efficient manner.

Parties may, on consent or through case management, seek a hearing date prior to the filing of their application records.

If at the outset of, or during, a proceeding, they agree to a schedule setting out the steps required for the perfection of the application, the parties may seek a hearing date, at any time, by writing to the office of the Judicial Administrator of the Federal Court. The letter must:

- include a copy of the schedule agreed to by all of the parties;
- indicate whether a notice of constitutional question will be required;
- indicate the place at which the hearing should be held;
- set out the maximum number of hours or days required for the hearing;
- provide a list of the dates on which the parties are available and not available during the 90 days following the date on which the application will be ready for hearing;
- include the name, address for service and telephone number of each solicitor or, where a party is unrepresented, the address and telephone number of the party; and,

- indicate whether the language used in the application will be English, French or both.

The Court will endeavour to accommodate early requests for hearing dates whenever possible.

This direction is not intended to replace the current practice for abridging timelines pursuant to rule 8. Parties may continue to seek orders expediting applications in urgent circumstances pursuant to rule 8.

This practice direction is not applicable to applications made pursuant to the *Immigration and Refugee Protection Act* or the *Patented Medicines (Notice of Compliance) Regulations*.

"Allan Lutfy"

Chief Justice

CANADA

CONSOLIDATION

CODIFICATION

Canada Elections Act

Loi électorale du Canada

S.C. 2000, c. 9

L.C. 2000, ch. 9

Current to May 25, 2015

À jour au 25 mai 2015

Last amended on January 1, 2015

Dernière modification le 1 janvier 2015

Published by the Minister of Justice at the following address:
http://laws-lois.justice.gc.ca

Publié par le ministre de la Justice à l'adresse suivante :
http://lois-laws.justice.gc.ca

their qualification as an elector or relating to any other information referred to in section 49;

(*b*) knowingly make a false or misleading statement, orally or in writing, relating to another person's qualification as an elector, to the surname, given names, sex, civic address or mailing address of that person, or to the identifier assigned to that person by the Chief Electoral Officer, for the purpose of having that person's name deleted from the Register of Electors;

(*c*) request the listing in the Register of Electors of the name of a person who is not qualified as an elector, knowing that the person is not so qualified;

(*d*) wilfully apply to have included in the Register of Electors the name of an animal or thing;

(*e*) knowingly use personal information that is obtained from the Register of Electors except as follows:

(i) to enable registered parties, members or candidates to communicate with electors in accordance with section 110,

(ii) for the purpose of a federal election or referendum, or

(iii) in accordance with the conditions included in an agreement made under section 55, in the case of information that is transmitted in accordance with the agreement; or

(*f*) knowingly use other personal information that is transmitted in accordance with an agreement made under section 55 except in accordance with the conditions included in the agreement.

2000, c. 9, s. 56; 2007, c. 21, s. 10.

lativement à sa qualité d'électeur ou au sujet des autres renseignements visés à l'article 49;

b) de faire sciemment, oralement ou par écrit, une déclaration fausse ou trompeuse relativement à la qualité d'électeur, aux nom, prénoms, sexe ou adresses municipale ou postale d'une autre personne, ou encore à l'identificateur qui lui a été attribué par le directeur général des élections en vue de la faire radier du Registre des électeurs;

c) de demander que soit inscrit au Registre des électeurs le nom d'une personne sachant que celle-ci n'a pas qualité d'électeur;

d) de demander volontairement que soit inscrit au Registre des électeurs le nom d'une chose ou d'un animal;

e) d'utiliser sciemment un renseignement personnel tiré du Registre des électeurs sauf :

(i) pour permettre, conformément à l'article 110, aux partis enregistrés, aux députés et aux candidats de communiquer avec des électeurs,

(ii) pour les besoins d'une élection ou d'un référendum fédéral,

(iii) pour la communication d'un renseignement transmis dans le cadre de l'accord prévu à l'article 55, conformément aux conditions prévues par celui-ci;

f) d'utiliser sciemment tout autre renseignement personnel transmis dans le cadre d'un accord prévu à l'article 55, sauf conformément aux conditions prévues dans l'accord.

2000, ch. 9, art. 56; 2007, ch. 21, art. 10.

PART 5

CONDUCT OF AN ELECTION

Date of General Election

Powers of Governor General preserved

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.

Election dates

(2) Subject to subsection (1), each general election must be held on the third Monday of

PARTIE 5

TENUE D'UNE ÉLECTION

Date des élections générales

Maintien des pouvoirs du gouverneur général

56.1 (1) Le présent article n'a pas pour effet de porter atteinte aux pouvoirs du gouverneur général, notamment celui de dissoudre le Parlement lorsqu'il le juge opportun.

Date des élections

(2) Sous réserve du paragraphe (1), les élections générales ont lieu le troisième lundi d'oc-

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.

2007, c. 10, s. 1.

tobre de la quatrième année civile qui suit le jour du scrutin de la dernière élection générale, la première élection générale suivant l'entrée en vigueur du présent article devant avoir lieu le lundi 19 octobre 2009.

2007, ch. 10, art. 1.

Alternate day

56.2 (1) If the Chief Electoral Officer is of the opinion that a Monday that would otherwise be polling day under subsection 56.1(2) is not suitable for that purpose, including by reason of its being in conflict with a day of cultural or religious significance or a provincial or municipal election, the Chief Electoral Officer may choose another day in accordance with subsection (4) and shall recommend to the Governor in Council that polling day be that other day.

Jour de rechange

56.2 (1) S'il est d'avis que le lundi qui serait normalement le jour du scrutin en application du paragraphe 56.1(2) ne convient pas à cette fin, notamment parce qu'il coïncide avec un jour revêtant une importance culturelle ou religieuse ou avec la tenue d'une élection provinciale ou municipale, le directeur général des élections peut choisir un autre jour, conformément au paragraphe (4), qu'il recommande au gouverneur en conseil de fixer comme jour du scrutin.

Publication of recommendation

(2) If the Chief Electoral Officer recommends an alternate day for a general election in accordance with subsection (1), he or she shall without delay publish in the *Canada Gazette* notice of the day recommended.

Publication de la recommandation

(2) Le cas échéant, le directeur général des élections publie, sans délai, le jour recommandé dans la *Gazette du Canada*.

Making and publication of order

(3) If the Governor in Council accepts the recommendation, the Governor in Council shall make an order to that effect. The order must be published without delay in the *Canada Gazette*.

Prise et publication du décret

(3) S'il accepte la recommandation, le gouverneur en conseil prend un décret y donnant effet. Le décret est publié sans délai dans la *Gazette du Canada*.

Limitation

(4) The alternate day must be either the Tuesday immediately following the Monday that would otherwise be polling day or the Monday of the following week.

Restriction

(4) Le jour de rechange est soit le mardi qui suit le jour qui serait normalement le jour du scrutin, soit le lundi suivant.

Timing of proclamation

(5) An order under subsection (3) shall not be made after August 1 in the year in which the general election is to be held.

Date limite de la prise du décret

(5) Le décret prévu au paragraphe (3) ne peut être pris après le 1er août de l'année pendant laquelle l'élection générale doit être tenue.

2007, c. 10, s. 1.

2007, ch. 10, art. 1.

Writs of Election

Brefs

General election — proclamation

57. (1) The Governor in Council shall issue a proclamation in order for a general election to be held.

Élection générale : proclamation

57. (1) Pour déclencher une élection générale, le gouverneur en conseil prend une proclamation.

By-election — order

(1.1) The Governor in Council shall make an order in order for a by-election to be held.

Élection partielle : décret

(1.1) Pour déclencher une élection partielle, le gouverneur en conseil prend un décret.

Contents

(1.2) The proclamation or order shall

Contenu

(1.2) La proclamation ou le décret :

(*a*) direct the Chief Electoral Officer to issue a writ to the returning officer for each electoral district to which the proclamation or order applies;

a) ordonne au directeur général des élections de délivrer un bref au directeur du scrutin de chacune des circonscriptions visées;

(*b*) fix the date of issue of the writ; and

b) fixe la date de délivrance du bref;

CANADA

A Consolidation of

THE CONSTITUTION ACTS 1867 to 1982

DEPARTMENT OF JUSTICE
CANADA

Consolidated as of January 1, 2013

House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof. [8]

First Session of the Parliament of Canada

19. The Parliament of Canada shall be called together not later than Six Months after the Union. [9]

20. Repealed. [10]

THE SENATE

Number of Senators

21. The Senate shall, subject to the Provisions of this Act, consist of One Hundred and five Members, who shall be styled Senators. [11]

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[8] Repealed and re-enacted by the *Parliament of Canada Act, 1875*, 38-39 Vict., c. 38 (U.K.). The original section read as follows:

18. The Privileges, Immunities, and Powers to be held, enjoyed, and exercised by the Senate and by the House of Commons and by the Members thereof respectively shall be such as are from Time to Time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the Members thereof.

[9] Spent. The first session of the first Parliament began on November 6, 1867.

[10] Section 20, repealed by the *Constitution Act, 1982*, read as follows:

20. There shall be a Session of the Parliament of Canada once at least in every Year, so that Twelve Months shall not intervene between the last Sitting of the Parliament in one Session and its first sitting in the next Session.

Section 20 has been replaced by section 5 of the *Constitution Act, 1982*, which provides that there shall be a sitting of Parliament at least once every twelve months.

[11] As amended by the *Constitution Act, 1915*, 5-6 Geo. V, c. 45 (U.K.) and modified by the *Newfoundland Act*, 12-13 Geo. VI, c. 22 (U.K.), the *Constitution Act (No. 2), 1975*, S.C. 1974-75-76, c. 53, and the *Constitution Act, 1999 (Nunavut)*, S.C. 1998, c. 15, Part 2. The original section read as follows:

21. The Senate shall, subject to the Provisions of this Act, consist of Seventy-two Members, who shall be styled Senators.

The *Manitoba Act, 1870*, added two senators for Manitoba; the *British Columbia Terms of Union* added three; upon admission of Prince Edward Island four more were provided by section 147 of the *Constitution Act, 1867*; the *Alberta Act* and the *Saskatchewan Act* each added four. The Senate was reconstituted at 96 by the *Constitution Act, 1915*. Six more senators were added upon union with Newfoundland, and one senator each was added for Yukon and the Northwest Territories by the *Constitution Act (No. 2), 1975*. One senator was added for Nunavut by the *Constitution Act, 1999 (Nunavut)*.

Representation of Provinces in Senate

22. In relation to the Constitution of the Senate Canada shall be deemed to consist of Four Divisions:

1. Ontario;
2. Quebec;
3. The Maritime Provinces, Nova Scotia and New Brunswick, and Prince Edward Island;
4. The Western Provinces of Manitoba, British Columbia, Saskatchewan, and Alberta;

which Four Divisions shall (subject to the Provisions of this Act) be equally represented in the Senate as follows: Ontario by twenty-four senators; Quebec by twenty-four senators; the Maritime Provinces and Prince Edward Island by twenty-four senators, ten thereof representing Nova Scotia, ten thereof representing New Brunswick, and four thereof representing Prince Edward Island; the Western Provinces by twenty-four senators, six thereof representing Manitoba, six thereof representing British Columbia, six thereof representing Saskatchewan, and six thereof representing Alberta; Newfoundland shall be entitled to be represented in the Senate by six members; the Yukon Territory, the Northwest Territories and Nunavut shall be entitled to be represented in the Senate by one member each.

In the Case of Quebec each of the Twenty-four Senators representing that Province shall be appointed for One of the Twenty-four Electoral Divisions of Lower Canada specified in Schedule A. to Chapter One of the Consolidated Statutes of Canada. **(12)**

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(12) As amended by the *Constitution Act, 1915*, 5-6 Geo. V, c. 45 (U.K.), the *Newfoundland Act*, 12-13 Geo. VI, c. 22 (U.K.), the *Constitution Act (No. 2), 1975*, S.C. 1974-75-76, c. 53 and the *Constitution Act, 1999 (Nunavut)*, S.C. 1998, c. 15, Part 2. The original section read as follows:

22. In relation to the Constitution of the Senate, Canada shall be deemed to consist of Three Divisions:

1. Ontario;

2. Quebec;

3. The Maritime Provinces, Nova Scotia and New Brunswick;

which Three Divisions shall (subject to the Provisions of this Act) be equally represented in the Senate as follows: Ontario by Twenty-four Senators; Quebec by Twenty-four Senators; and the Maritime Provinces by Twenty-four Senators, Twelve thereof representing Nova Scotia, and Twelve thereof representing New Brunswick.

In the case of Quebec each of the Twenty-four Senators representing that Province shall be appointed for One of the Twenty-four Electoral Divisions of Lower Canada specified in Schedule A. to Chapter One of the Consolidated Statutes of Canada.

The reference in section 22 to the Consolidated Statutes of Canada is a reference to the Consolidated Statutes of 1859.

Qualifications of Senator

23. The Qualifications of a Senator shall be as follows:

(1) He shall be of the full age of Thirty Years;

(2) He shall be either a natural-born Subject of the Queen, or a Subject of the Queen naturalized by an Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of One of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, before the Union, or of the Parliament of Canada after the Union;

(3) He shall be legally or equitably seised as of Freehold for his own Use and Benefit of Lands or Tenements held in Free and Common Socage, or seised or possessed for his own Use and Benefit of Lands or Tenements held in Franc-alleu or in Roture, within the Province for which he is appointed, of the Value of Four thousand Dollars, over and above all Rents, Dues, Debts, Charges, Mortgages, and Incumbrances due or payable out of or charged on or affecting the same;

(4) His Real and Personal Property shall be together worth Four thousand Dollars over and above his Debts and Liabilities;

(5) He shall be resident in the Province for which he is appointed;

(6) In the Case of Quebec he shall have his Real Property Qualification in the Electoral Division for which he is appointed, or shall be resident in that Division. [(13)]

[(13)] Section 44 of the *Constitution Act, 1999 (Nunavut)*, S.C. 1998, c. 15, Part 2, provided that, for the purposes of that Part (which added one senator for Nunavut), the word "Province" in section 23 of the *Constitution Act, 1867* has the same meaning as is assigned to the word "province" by section 35 of the *Interpretation Act*, R.S.C. 1985, c. I-21, as amended, which provides that the term "province" means "a province of Canada, and includes Yukon, the Northwest Territories and Nunavut".

Section 2 of the *Constitution Act (No. 2), 1975*, S.C. 1974-75-76, c. 53, provided that for the purposes of that Act (which added one senator each for the Yukon Territory and the Northwest Territories) the term "Province" in section 23 of the *Constitution Act, 1867* has the same meaning as is assigned to the term "province" by section 28 of the *Interpretation Act*, R.S.C. 1970, c. I-23, which provides that the term "province" means "a province of Canada, and includes the Yukon Territory and the Northwest Territories".

Summons of Senator

24. The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon qualified Persons to the Senate; and, subject to the Provisions of this Act, every Person so summoned shall become and be a Member of the Senate and a Senator.

25. Repealed. **(14)**

Addition of Senators in certain cases

26. If at any Time on the Recommendation of the Governor General the Queen thinks fit to direct that Four or Eight Members be added to the Senate, the Governor General may by Summons to Four or Eight qualified Persons (as the Case may be), representing equally the Four Divisions of Canada, add to the Senate accordingly. **(15)**

Reduction of Senate to normal Number

27. In case of such Addition being at any Time made, the Governor General shall not summon any Person to the Senate, except on a further like Direction by the Queen on the like Recommendation, to represent one of the Four Divisions until such Division is represented by Twenty-four Senators and no more. **(16)**

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(14) Repealed by the *Statute Law Revision Act, 1893*, 56-57 Vict., c. 14 (U.K.). The section read as follows:

25. Such Persons shall be first summoned to the Senate as the Queen by Warrant under Her Majesty's Royal Sign Manual thinks fit to approve, and their Names shall be inserted in the Queen's Proclamation of Union.

(15) As amended by the *Constitution Act, 1915*, 5-6 Geo. V, c. 45 (U.K.). The original section read as follows:

26. If at any Time on the Recommendation of the Governor General the Queen thinks fit to direct that Three or Six Members be added to the Senate, the Governor General may by Summons to Three or Six qualified Persons (as the Case may be), representing equally the Three Divisions of Canada, add to the Senate accordingly.

(16) As amended by the *Constitution Act, 1915*, 5-6 Geo. V, c. 45 (U.K.). The original section read as follows:

27. In case of such Addition being at any Time made the Governor General shall not summon any Person to the Senate except on a further like Direction by the Queen on the like Recommendation, until each of the Three Divisions of Canada is represented by Twenty-four Senators and no more.

Maximum Number of Senators

28. The Number of Senators shall not at any Time exceed One Hundred and thirteen. [(17)]

Tenure of Place in Senate

29. (1) Subject to subsection (2), a Senator shall, subject to the provisions of this Act, hold his place in the Senate for life.

Retirement upon attaining age of seventy-five years

(2) A Senator who is summoned to the Senate after the coming into force of this subsection shall, subject to this Act, hold his place in the Senate until he attains the age of seventy-five years. [(18)]

Resignation of Place in Senate

30. A Senator may by Writing under his Hand addressed to the Governor General resign his Place in the Senate, and thereupon the same shall be vacant.

Disqualification of Senators

31. The Place of a Senator shall become vacant in any of the following Cases:

(1) If for Two consecutive Sessions of the Parliament he fails to give his Attendance in the Senate;

(2) If he takes an Oath or makes a Declaration or Acknowledgment of Allegiance, Obedience, or Adherence to a Foreign Power, or does an Act whereby he becomes a Subject or Citizen, or entitled to the Rights or Privileges of a Subject or Citizen, of a Foreign Power;

(3) If he is adjudged Bankrupt or Insolvent, or applies for the Benefit of any Law relating to Insolvent Debtors, or becomes a public Defaulter;

(4) If he is attainted of Treason or convicted of Felony or of any infamous Crime;

[(17)] As amended by the *Constitution Act, 1915*, 5-6 Geo. V, c. 45 (U.K.), the *Constitution Act (No. 2), 1975*, S.C. 1974-75-76, c. 53, and the *Constitution Act, 1999 (Nunavut)*, S.C. 1998, c. 15, Part 2. The original section read as follows:

28. The Number of Senators shall not at any Time exceed Seventy-eight.

[(18)] As enacted by the *Constitution Act, 1965*, S.C. 1965, c. 4, which came into force on June 2, 1965. The original section read as follows:

29. A Senator shall, subject to the Provisions of this Act, hold his Place in the Senate for Life.

(5) If he ceases to be qualified in respect of Property or of Residence; provided, that a Senator shall not be deemed to have ceased to be qualified in respect of Residence by reason only of his residing at the Seat of the Government of Canada while holding an Office under that Government requiring his Presence there.

Summons on Vacancy in Senate

32. When a Vacancy happens in the Senate by Resignation, Death, or otherwise, the Governor General shall by Summons to a fit and qualified Person fill the Vacancy.

Questions as to Qualifications and Vacancies in Senate

33. If any Question arises respecting the Qualification of a Senator or a Vacancy in the Senate the same shall be heard and determined by the Senate.

Appointment of Speaker of Senate

34. The Governor General may from Time to Time, by Instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his Stead. **(19)**

Quorum of Senate

35. Until the Parliament of Canada otherwise provides, the Presence of at least Fifteen Senators, including the Speaker, shall be necessary to constitute a Meeting of the Senate for the Exercise of its Powers.

Voting in Senate

36. Questions arising in the Senate shall be decided by a Majority of Voices, and the Speaker shall in all Cases have a Vote, and when the Voices are equal the Decision shall be deemed to be in the Negative.

The House of Commons

Constitution of House of Commons in Canada

37. The House of Commons shall, subject to the Provisions of this Act, consist of three hundred and eight members of whom one hundred and six shall be elected for Ontario, seventy-five for Quebec, eleven for Nova Scotia, ten for New

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(19) Provision for exercising the functions of Speaker during his or her absence is made by Part II of the *Parliament of Canada Act*, R.S.C. 1985, c. P-1 (formerly the *Speaker of the Senate Act*, R.S.C. 1970, c. S-14). Doubts as to the power of Parliament to enact the *Speaker of the Senate Act* were removed by the *Canadian Speaker (Appointment of Deputy) Act, 1895*, 2nd Sess., 59 Vict., c. 3 (U.K.), which was repealed by the *Constitution Act, 1982*.

CANADA

CONSOLIDATION

CODIFICATION

Federal Courts Act

Loi sur les Cours fédérales

R.S.C., 1985, c. F-7

L.R.C. (1985), ch. F-7

Current to May 25, 2015

À jour au 25 mai 2015

Last amended on December 16, 2014

Dernière modification le 16 décembre 2014

Published by the Minister of Justice at the following address:
http://laws-lois.justice.gc.ca

Publié par le ministre de la Justice à l'adresse suivante :
http://lois-laws.justice.gc.ca

eral Court — Trial Division or the Exchequer Court of Canada; and

(*b*) any question of law, fact or mixed law and fact that the Crown and any person have agreed in writing shall be determined by the Federal Court, the Federal Court — Trial Division or the Exchequer Court of Canada.

Conflicting claims against Crown

(4) The Federal Court has concurrent original jurisdiction to hear and determine proceedings to determine disputes in which the Crown is or may be under an obligation and in respect of which there are or may be conflicting claims.

Relief in favour of Crown or against officer

(5) The Federal Court has concurrent original jurisdiction

(*a*) in proceedings of a civil nature in which the Crown or the Attorney General of Canada claims relief; and

(*b*) in proceedings in which relief is sought against any person for anything done or omitted to be done in the performance of the duties of that person as an officer, servant or agent of the Crown.

Federal Court has no jurisdiction

(6) If an Act of Parliament confers jurisdiction in respect of a matter on a court constituted or established by or under a law of a province, the Federal Court has no jurisdiction to entertain any proceeding in respect of the same matter unless the Act expressly confers that jurisdiction on that court.

R.S., 1985, c. F-7, s. 17; 1990, c. 8, s. 3; 2002, c. 8, s. 25.

Extraordinary remedies, federal tribunals

18. (1) Subject to section 28, the Federal Court has exclusive original jurisdiction

(*a*) to issue an injunction, writ of *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal; and

(*b*) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (*a*), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

tion de première instance de la Cour fédérale;

b) toute question de droit, de fait ou mixte à trancher, aux termes d'une convention écrite à laquelle la Couronne est partie, par la Cour fédérale — ou l'ancienne Cour de l'Échiquier du Canada — ou par la Section de première instance de la Cour fédérale.

Demandes contradictoires contre la Couronne

(4) Elle a compétence concurrente, en première instance, dans les procédures visant à régler les différends mettant en cause la Couronne à propos d'une obligation réelle ou éventuelle pouvant faire l'objet de demandes contradictoires.

Actions en réparation

(5) Elle a compétence concurrente, en première instance, dans les actions en réparation intentées :

a) au civil par la Couronne ou le procureur général du Canada;

b) contre un fonctionnaire, préposé ou mandataire de la Couronne pour des faits — actes ou omissions — survenus dans le cadre de ses fonctions.

Incompétence de la Cour fédérale

(6) Elle n'a pas compétence dans les cas où une loi fédérale donne compétence à un tribunal constitué ou maintenu sous le régime d'une loi provinciale sans prévoir expressément la compétence de la Cour fédérale.

L.R. (1985), ch. F-7, art. 17; 1990, ch. 8, art. 3; 2002, ch. 8, art. 25.

Recours extraordinaires : offices fédéraux

18. (1) Sous réserve de l'article 28, la Cour fédérale a compétence exclusive, en première instance, pour :

a) décerner une injonction, un bref de *certiorari*, de *mandamus*, de prohibition ou de *quo warranto*, ou pour rendre un jugement déclaratoire contre tout office fédéral;

b) connaître de toute demande de réparation de la nature visée par l'alinéa *a*), et notamment de toute procédure engagée contre le procureur général du Canada afin d'obtenir réparation de la part d'un office fédéral.

Extraordinary remedies, members of Canadian Forces

(2) The Federal Court has exclusive original jurisdiction to hear and determine every application for a writ of *habeas corpus ad subjiciendum*, writ of *certiorari*, writ of prohibition or writ of *mandamus* in relation to any member of the Canadian Forces serving outside Canada.

Recours extraordinaires : Forces canadiennes

(2) Elle a compétence exclusive, en première instance, dans le cas des demandes suivantes visant un membre des Forces canadiennes en poste à l'étranger : bref d'*habeas corpus ad subjiciendum*, de *certiorari*, de prohibition ou de *mandamus*.

Remedies to be obtained on application

(3) The remedies provided for in subsections (1) and (2) may be obtained only on an application for judicial review made under section 18.1.

Exercice des recours

(3) Les recours prévus aux paragraphes (1) ou (2) sont exercés par présentation d'une demande de contrôle judiciaire.

R.S., 1985, c. F-7, s. 18; 1990, c. 8, s. 4; 2002, c. 8, s. 26.

L.R. (1985), ch. F-7, art. 18; 1990, ch. 8, art. 4; 2002, ch. 8, art. 26.

Application for judicial review

18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.

Demande de contrôle judiciaire

18.1 (1) Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par l'objet de la demande.

Time limitation

(2) An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days.

Délai de présentation

(2) Les demandes de contrôle judiciaire sont à présenter dans les trente jours qui suivent la première communication, par l'office fédéral, de sa décision ou de son ordonnance au bureau du sous-procureur général du Canada ou à la partie concernée, ou dans le délai supplémentaire qu'un juge de la Cour fédérale peut, avant ou après l'expiration de ces trente jours, fixer ou accorder.

Powers of Federal Court

(3) On an application for judicial review, the Federal Court may

(*a*) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or

(*b*) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.

Pouvoirs de la Cour fédérale

(3) Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :

a) ordonner à l'office fédéral en cause d'accomplir tout acte qu'il a illégalement omis ou refusé d'accomplir ou dont il a retardé l'exécution de manière déraisonnable;

b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.

Grounds of review

(4) The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal

(*a*) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;

(*b*) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;

Motifs

(4) Les mesures prévues au paragraphe (3) sont prises si la Cour fédérale est convaincue que l'office fédéral, selon le cas :

a) a agi sans compétence, outrepassé celle-ci ou refusé de l'exercer;

b) n'a pas observé un principe de justice naturelle ou d'équité procédurale ou toute autre procédure qu'il était légalement tenu de respecter;

(*c*) erred in law in making a decision or an order, whether or not the error appears on the face of the record;

(*d*) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;

(*e*) acted, or failed to act, by reason of fraud or perjured evidence; or

(*f*) acted in any other way that was contrary to law.

c) a rendu une décision ou une ordonnance entachée d'une erreur de droit, que celle-ci soit manifeste ou non au vu du dossier;

d) a rendu une décision ou une ordonnance fondée sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments dont il dispose;

e) a agi ou omis d'agir en raison d'une fraude ou de faux témoignages;

f) a agi de toute autre façon contraire à la loi.

Defect in form or technical irregularity

(5) If the sole ground for relief established on an application for judicial review is a defect in form or a technical irregularity, the Federal Court may

(*a*) refuse the relief if it finds that no substantial wrong or miscarriage of justice has occurred; and

(*b*) in the case of a defect in form or a technical irregularity in a decision or an order, make an order validating the decision or order, to have effect from any time and on any terms that it considers appropriate.

1990, c. 8, s. 5; 2002, c. 8, s. 27.

Vice de forme

(5) La Cour fédérale peut rejeter toute demande de contrôle judiciaire fondée uniquement sur un vice de forme si elle estime qu'en l'occurrence le vice n'entraîne aucun dommage important ni déni de justice et, le cas échéant, valider la décision ou l'ordonnance entachée du vice et donner effet à celle-ci selon les modalités de temps et autres qu'elle estime indiquées.

1990, ch. 8, art. 5; 2002, ch. 8, art. 27.

Interim orders

18.2 On an application for judicial review, the Federal Court may make any interim orders that it considers appropriate pending the final disposition of the application.

1990, c. 8, s. 5; 2002, c. 8, s. 28.

Mesures provisoires

18.2 La Cour fédérale peut, lorsqu'elle est saisie d'une demande de contrôle judiciaire, prendre les mesures provisoires qu'elle estime indiquées avant de rendre sa décision définitive.

1990, ch. 8, art. 5; 2002, ch. 8, art. 28.

Reference by federal tribunal

18.3 (1) A federal board, commission or other tribunal may at any stage of its proceedings refer any question or issue of law, of jurisdiction or of practice and procedure to the Federal Court for hearing and determination.

Renvoi d'un office fédéral

18.3 (1) Les offices fédéraux peuvent, à tout stade de leurs procédures, renvoyer devant la Cour fédérale pour audition et jugement toute question de droit, de compétence ou de pratique et procédure.

Reference by Attorney General of Canada

(2) The Attorney General of Canada may, at any stage of the proceedings of a federal board, commission or other tribunal, other than a service tribunal within the meaning of the *National Defence Act*, refer any question or issue of the constitutional validity, applicability or operability of an Act of Parliament or of regulations made under an Act of Parliament to the Federal Court for hearing and determination.

1990, c. 8, s. 5; 2002, c. 8, s. 28.

Renvoi du procureur général

(2) Le procureur général du Canada peut, à tout stade des procédures d'un office fédéral, sauf s'il s'agit d'un tribunal militaire au sens de la *Loi sur la défense nationale*, renvoyer devant la Cour fédérale pour audition et jugement toute question portant sur la validité, l'applicabilité ou l'effet, sur le plan constitutionnel, d'une loi fédérale ou de ses textes d'application.

1990, ch. 8, art. 5; 2002, ch. 8, art. 28.

Hearings in summary way

18.4 (1) Subject to subsection (2), an application or reference to the Federal Court under any of sections 18.1 to 18.3 shall be heard and

Procédure sommaire d'audition

18.4 (1) Sous réserve du paragraphe (2), la Cour fédérale statue à bref délai et selon une procédure sommaire sur les demandes et les

determined without delay and in a summary way.

Exception

(2) The Federal Court may, if it considers it appropriate, direct that an application for judicial review be treated and proceeded with as an action.

1990, c. 8, s. 5; 2002, c. 8, s. 28.

Exception to sections 18 and 18.1

18.5 Despite sections 18 and 18.1, if an Act of Parliament expressly provides for an appeal to the Federal Court, the Federal Court of Appeal, the Supreme Court of Canada, the Court Martial Appeal Court, the Tax Court of Canada, the Governor in Council or the Treasury Board from a decision or an order of a federal board, commission or other tribunal made by or in the course of proceedings before that board, commission or tribunal, that decision or order is not, to the extent that it may be so appealed, subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with, except in accordance with that Act.

1990, c. 8, s. 5; 2002, c. 8, s. 28.

Intergovernmental disputes

19. If the legislature of a province has passed an Act agreeing that the Federal Court, the Federal Court of Canada or the Exchequer Court of Canada has jurisdiction in cases of controversies between Canada and that province, or between that province and any other province or provinces that have passed a like Act, the Federal Court has jurisdiction to determine the controversies.

R.S., 1985, c. F-7, s. 19; 2002, c. 8, s. 28.

Industrial property, exclusive jurisdiction

20. (1) The Federal Court has exclusive original jurisdiction, between subject and subject as well as otherwise,

(*a*) in all cases of conflicting applications for any patent of invention, or for the registration of any copyright, trade-mark, industrial design or topography within the meaning of the *Integrated Circuit Topography Act*; and

(*b*) in all cases in which it is sought to impeach or annul any patent of invention or to have any entry in any register of copyrights, trade-marks, industrial designs or topographies referred to in paragraph (*a*) made, expunged, varied or rectified.

renvois qui lui sont présentés dans le cadre des articles 18.1 à 18.3.

Exception

(2) Elle peut, si elle l'estime indiqué, ordonner qu'une demande de contrôle judiciaire soit instruite comme s'il s'agissait d'une action.

1990, ch. 8, art. 5; 2002, ch. 8, art. 28.

Dérogation aux art. 18 et 18.1

18.5 Par dérogation aux articles 18 et 18.1, lorsqu'une loi fédérale prévoit expressément qu'il peut être interjeté appel, devant la Cour fédérale, la Cour d'appel fédérale, la Cour suprême du Canada, la Cour d'appel de la cour martiale, la Cour canadienne de l'impôt, le gouverneur en conseil ou le Conseil du Trésor, d'une décision ou d'une ordonnance d'un office fédéral, rendue à tout stade des procédures, cette décision ou cette ordonnance ne peut, dans la mesure où elle est susceptible d'un tel appel, faire l'objet de contrôle, de restriction, de prohibition, d'évocation, d'annulation ni d'aucune autre intervention, sauf en conformité avec cette loi.

1990, ch. 8, art. 5; 2002, ch. 8, art. 28.

Différends entre gouvernements

19. Lorsqu'une loi d'une province reconnaît sa compétence en l'espèce, — qu'elle y soit désignée sous le nom de Cour fédérale, Cour fédérale du Canada ou Cour de l'Échiquier du Canada — la Cour fédérale est compétente pour juger les cas de litige entre le Canada et cette province ou entre cette province et une ou plusieurs autres provinces ayant adopté une loi semblable.

L.R. (1985), ch. F-7, art. 19; 2002, ch. 8, art. 28.

Propriété industrielle : compétence exclusive

20. (1) La Cour fédérale a compétence exclusive, en première instance, dans les cas suivants opposant notamment des administrés :

a) conflit des demandes de brevet d'invention ou d'enregistrement d'un droit d'auteur, d'une marque de commerce, d'un dessin industriel ou d'une topographie au sens de la *Loi sur les topographies de circuits intégrés*;

b) tentative d'invalidation ou d'annulation d'un brevet d'invention, ou d'inscription, de radiation ou de modification dans un registre de droits d'auteur, de marques de commerce, de dessins industriels ou de topographies visées à l'alinéa *a*).

CANADA

CONSOLIDATION

CODIFICATION

Federal Courts Rules

Règles des Cours fédérales

SOR/98-106

DORS/98-106

Current to May 25, 2015

À jour au 25 mai 2015

Last amended on January 30, 2015

Dernière modification le 30 janvier 2015

Published by the Minister of Justice at the following address:
http://laws-lois.justice.gc.ca

Publié par le ministre de la Justice à l'adresse suivante :
http://lois-laws.justice.gc.ca

RULES FOR REGULATING THE PRACTICE AND PROCEDURE IN THE FEDERAL COURT OF APPEAL AND THE FEDERAL COURT

RÈGLES CONCERNANT LA PRATIQUE ET LA PROCÉDURE À LA COUR D'APPEL FÉDÉRALE ET À LA COUR FÉDÉRALE

SHORT TITLE

TITRE ABRÉGÉ

Short title

1. These Rules may be cited as the *Federal Courts Rules*.

SOR/2004-283, s. 2.

Titre abrégé

1. *Règles des Cours fédérales*.

DORS/2004-283, art. 2.

PART 1

APPLICATION AND INTERPRETATION

PARTIE 1

APPLICATION, DÉFINITIONS ET INTERPRÉTATION

Application

Champ d'application

Application

1.1 (1) These Rules apply to all proceedings in the Federal Court of Appeal and the Federal Court unless otherwise provided by or under an Act of Parliament.

Application

1.1 (1) Sauf disposition contraire d'une loi fédérale ou de ses textes d'application, les présentes règles s'appliquent à toutes les instances devant la Cour d'appel fédérale et la Cour fédérale.

Inconsistency with Act

(2) In the event of any inconsistency between these Rules and an Act of Parliament or a regulation made under such an Act, that Act or regulation prevails to the extent of the inconsistency.

SOR/2004-283, s. 2

Dispositions incompatibles

(2) Les dispositions de toute loi fédérale ou de ses textes d'application l'emportent sur les dispositions incompatibles des présentes règles.

DORS/2004-283, art. 2.

Interpretation

Définitions et interprétation

Definitions

2. The following definitions apply in these Rules.

Définitions

2. Les définitions qui suivent s'appliquent aux présentes règles.

"Act" «*Loi*»

"Act" means the *Federal Courts Act*.

«acte de procédure» Acte par lequel une instance est introduite, les prétentions des parties sont énoncées ou une réponse est donnée.

«acte de procédure» "*pleading*"

"action" «*action*»

"action" means a proceeding referred to in rule 169.

«acte introductif d'instance» Acte visé à la règle 63.

«acte introductif d'instance» "*originating document*"

"address for service" «*adresse aux fins de signification*»

"address for service" means

(*a*) in respect of a party who has no solicitor of record,

(i) the address shown on the last document filed by the party that indicates an address in Canada, or

«action» Instance visée à la règle 169.

«action» "*action*"

«action en matière d'amirauté» Action pour laquelle la Cour a compétence en vertu de l'article 22 de la Loi.

«action en matière d'amirauté» "*Admiralty action*"

"business day" [Repealed, SOR/2015-21, s. 1]

"case management judge" «*juge responsable de la gestion de l'instance*»

"case management judge" means a judge assigned under paragraph 383(*a*) or rule 383.1 and includes a prothonotary assigned under paragraph 383(*b*).

"certified copy" «*copie certifiée conforme*»

"certified copy", in respect of a document in the custody of the Registry, means a copy of the document certified by an officer of the Registry.

"Christmas recess" «*vacances judiciaires de Noël*»

"Christmas recess" means the period beginning on December 21 in a year and ending on January 7 in the following year.

"Court" «*Cour*»

"Court" means, as the circumstances require,

(*a*) the Federal Court of Appeal, including, in respect of a motion, a single judge of that court; or

(*b*) the Federal Court, including a prothonotary acting within the jurisdiction conferred under these Rules.

"Court file" «*dossier de la Cour*»

"Court file" means the file maintained pursuant to rule 23 or 24.

"dispute resolution conference" «*conférence de règlement des litiges*»

"dispute resolution conference" means a conference ordered under rule 386.

"filed" «*déposé*»

"filed", in respect of a document, means accepted for filing under rule 72.

"garnishee" «*tiers saisi*»

"garnishee" means a person in respect of whom an order attaching a debt to a judgment debtor has been made under rule 449.

"Hague Convention" «*Convention de La Haye*»

"Hague Convention" means the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* signed at The Hague on November 15, 1965.

«bref d'exécution» S'entend notamment d'un bref de saisie-exécution, d'un bref de mise en possession, d'un bref de délivrance, d'un bref de séquestration et de tout bref complémentaire. «bref d'exécution» "*writ of execution*"

«bureau local» Tout bureau du greffe de la Cour établi par l'administrateur autre que le bureau principal. «bureau local» "*local office*"

«bureau principal» Le bureau principal du greffe de la Cour établi par l'administrateur. «bureau principal» "*principal office*"

«conférence de règlement des litiges» Conférence ordonnée par la Cour en vertu de la règle 386. «conférence de règlement des litiges» "*dispute resolution conference*"

«Convention de La Haye» La *Convention relative à la signification et la notification à l'étranger des actes judiciaires et extrajudiciaires en matière civile ou commerciale*, signée à La Haye le 15 novembre 1965. «Convention de La Haye» "*Hague Convention*"

«copie certifiée conforme» Dans le cas d'un document dont le greffe a la garde, s'entend d'une copie de celui-ci certifiée conforme par un fonctionnaire du greffe. «copie certifiée conforme» "*certified copy*"

«Cour» Selon le cas : «Cour» "*Court*"

a) la Cour d'appel fédérale, à laquelle est assimilé, dans le cas d'une requête, un juge de cette cour siégeant seul;

b) la Cour fédérale, à laquelle est assimilé le protonotaire qui agit dans les limites de la compétence conférée par les présentes règles.

«déclaration» Document par lequel une action est introduite. «déclaration» "*statement of claim*"

«délivré» «délivré» "*issued*"

a) Dans le cas d'un acte introductif d'instance, se dit de celui qui est daté, signé et scellé du sceau de la Cour par

"writ of execution" «*bref d'exécution*»

"writ of execution" includes a writ of seizure and sale, a writ of possession, a writ of delivery and a writ of sequestration, and any further writ in aid thereof.

2002, c. 8, s. 182; SOR/2002-417, s. 1; SOR/2004-283, s. 3; SOR/2007-301, s. 1; SOR/2015-21, s. 1.

General principle

3. These Rules shall be interpreted and applied so as to secure the just, most expeditious and least expensive determination of every proceeding on its merits.

Principe général

3. Les présentes règles sont interprétées et appliquées de façon à permettre d'apporter une solution au litige qui soit juste et la plus expéditive et économique possible.

Matters not provided for

4. On motion, the Court may provide for any procedural matter not provided for in these Rules or in an Act of Parliament by analogy to these Rules or by reference to the practice of the superior court of the province to which the subject-matter of the proceeding most closely relates.

Cas non prévus

4. En cas de silence des présentes règles ou des lois fédérales, la Cour peut, sur requête, déterminer la procédure applicable par analogie avec les présentes règles ou par renvoi à la pratique de la cour supérieure de la province qui est la plus pertinente en l'espèce.

Forms

5. Where these Rules require that a form be used, the form may incorporate any variations that the circumstances require.

Formules

5. Les formules prévues par les présentes règles peuvent être adaptées selon les circonstances.

Computation, Extension and Abridgement of Time

Calcul et modification des délais

Interpretation Act

6. (1) Subject to subsections (2) and (3), the computation of time under these Rules, or under an order of the Court, is governed by sections 26 to 30 of the *Interpretation Act*.

Application de la *Loi d'interprétation*

6. (1) Sous réserve des paragraphes (2) et (3), le calcul des délais prévus par les présentes règles ou fixés par une ordonnance de la Cour est régi par les articles 26 à 30 de la *Loi d'interprétation*.

Period of less than seven days

(2) Where a period of less than seven days is provided for in these Rules or fixed by an order of the Court, a day that is a holiday shall not be included in computing the period.

Délai de moins de sept jours

(2) Lorsque le délai prévu par les présentes règles ou fixé par une ordonnance de la Cour est de moins de sept jours, les jours fériés n'entrent pas dans le calcul du délai.

Christmas recess

(3) Unless otherwise directed by the Court, a day that falls within the Christmas recess shall not be included in the computation of time under these Rules for filing, amending or serving a document.

Vacances judiciaires de Noël

(3) Sauf directives contraires de la Cour, les vacances judiciaires de Noël n'entrent pas dans le calcul des délais applicables selon les présentes règles au dépôt, à la modification ou à la signification d'un document.

Extension by consent

7. (1) Subject to subsections (2) and (3), a period provided by these Rules may be extended once by filing the consent in writing of all parties.

Délai prorogé par consentement écrit

7. (1) Sous réserve des paragraphes (2) et (3), tout délai prévu par les présentes règles peut être prorogé une seule fois par le dépôt du consentement écrit de toutes les parties.

Limitation

(2) An extension of a period under subsection (1) shall not exceed one half of the period sought to be extended.

Limite

(2) La prorogation selon le paragraphe (1) ne peut excéder la moitié du délai en cause.

Exception

(3) No extension may be made on consent of the parties in respect of a period fixed by an order of the Court or under subsection 203(1), 304(1) or 339(1).

Exception

(3) Les délais fixés par une ordonnance de la Cour et ceux prévus aux paragraphes 203(1), 304(1) et 339(1) ne peuvent être prorogés par le consentement des parties.

Extension or abridgement

8. (1) On motion, the Court may extend or abridge a period provided by these Rules or fixed by an order.

Délai prorogé ou abrégé

8. (1) La Cour peut, sur requête, proroger ou abréger tout délai prévu par les présentes règles ou fixé par ordonnance.

When motion may be brought

(2) A motion for an extension of time may be brought before or after the end of the period sought to be extended.

Moment de la présentation de la requête

(2) La requête visant la prorogation d'un délai peut être présentée avant ou après l'expiration du délai.

Motions for extension in Court of Appeal

(3) Unless the Court directs otherwise, a motion to the Federal Court of Appeal for an extension of time shall be brought in accordance with rule 369.

Requête présentée à la Cour d'appel fédérale

(3) Sauf directives contraires de la Cour, la requête visant la prorogation d'un délai qui est présentée à la Cour d'appel fédérale doit l'être selon la règle 369.

SOR/2004-283, s. 32.

DORS/2004-283, art. 32.

PART 2

ADMINISTRATION OF THE COURT

Officers of the Court

9. to 11. [Repealed, SOR/2004-283, s. 4]

PARTIE 2

ADMINISTRATION DE LA COUR

Fonctionnaires de la cour

9. à 11. [Abrogés, DORS/2004-283, art. 4]

Court registrars

12. (1) The Administrator shall arrange that there be in attendance at every sitting of the Court a duly qualified person to act as court registrar for the sitting, who shall, subject to the direction of the Court,

(*a*) make all arrangements necessary to conduct the sitting in an orderly, efficient and dignified manner;

Greffiers

12. (1) Sous réserve des directives de la Cour, l'administrateur veille à ce qu'une personne qualifiée pour agir à titre de greffier de la Cour soit présente à chacune des séances de la Cour; cette personne :

a) prend les dispositions nécessaires pour assurer l'ordre, la bonne marche et la dignité de la séance;

a certificate attached to it, signed by the person before whom the affidavit is sworn.

SOR/2002-417, s. 10.

sur un certificat joint à celle-ci, suivie de la signature de la personne qui reçoit le serment.

DORS/2002-417, art. 10.

Content of affidavits

81. (1) Affidavits shall be confined to facts within the deponent's personal knowledge except on motions, other than motions for summary judgment or summary trial, in which statements as to the deponent's belief, with the grounds for it, may be included.

Contenu

81. (1) Les affidavits se limitent aux faits dont le déclarant a une connaissance personnelle, sauf s'ils sont présentés à l'appui d'une requête – autre qu'une requête en jugement sommaire ou en procès sommaire – auquel cas ils peuvent contenir des déclarations fondées sur ce que le déclarant croit être les faits, avec motifs à l'appui.

Affidavits on belief

(2) Where an affidavit is made on belief, an adverse inference may be drawn from the failure of a party to provide evidence of persons having personal knowledge of material facts.

SOR/2009-331, s. 2.

Poids de l'affidavit

(2) Lorsqu'un affidavit contient des déclarations fondées sur ce que croit le déclarant, le fait de ne pas offrir le témoignage de personnes ayant une connaissance personnelle des faits substantiels peut donner lieu à des conclusions défavorables.

DORS/2009-331, art. 2.

Use of solicitor's affidavit

82. Except with leave of the Court, a solicitor shall not both depose to an affidavit and present argument to the Court based on that affidavit.

Utilisation de l'affidavit d'un avocat

82. Sauf avec l'autorisation de la Cour, un avocat ne peut à la fois être l'auteur d'un affidavit et présenter à la Cour des arguments fondés sur cet affidavit.

Cross-examination on affidavits

83. A party to a motion or application may cross-examine the deponent of an affidavit served by an adverse party to the motion or application.

Droit au contre-interrogatoire

83. Une partie peut contre-interroger l'auteur d'un affidavit qui a été signifié par une partie adverse dans le cadre d'une requête ou d'une demande.

When cross-examination may be made

84. (1) A party seeking to cross-examine the deponent of an affidavit filed in a motion or application shall not do so until the party has served on all other parties every affidavit on which the party intends to rely in the motion or application, except with the consent of all other parties or with leave of the Court.

Contre-interrogatoire de l'auteur d'un affidavit

84. (1) Une partie ne peut contre-interroger l'auteur d'un affidavit déposé dans le cadre d'une requête ou d'une demande à moins d'avoir signifié aux autres parties chaque affidavit qu'elle entend invoquer dans le cadre de celle-ci, sauf avec le consentement des autres parties ou l'autorisation de la Cour.

Filing of affidavit after cross-examination

(2) A party who has cross-examined the deponent of an affidavit filed in a motion or application may not subsequently file an affidavit in that motion or application, ex-

Dépôt d'un affidavit après le contre-interrogatoire

(2) La partie qui a contre-interrogé l'auteur d'un affidavit déposé dans le cadre d'une requête ou d'une demande ne peut par la suite déposer un affidavit dans le cadre de celle-ci, sauf avec le consente-

cept with the consent of all other parties or with leave of the Court.

Due diligence

85. A party who intends to cross-examine the deponent of an affidavit shall do so with due diligence.

Transcript of cross-examination on affidavit

86. Unless the Court orders otherwise, a party who conducts a cross-examination on an affidavit shall order and pay for a transcript thereof and send a copy to each other party.

Examinations out of Court

General

Definition of "examination"

87. In rules 88 to 100, "examination" means

(*a*) an examination for discovery;

(*b*) the taking of evidence out of court for use at trial;

(*c*) a cross-examination on an affidavit; or

(*d*) an examination in aid of execution.

Manner of examination

88. (1) Subject to rules 234 and 296, an examination may be conducted orally or in writing.

Electronic communications

(2) The Court may order that an examination out of court be recorded by video recording or conducted by video-conference or any other form of electronic communication.

Oral Examinations

Oral examination

89. (1) A party requesting an oral examination shall pay the fees and disbursements related to recording the examination in accordance with Tariff A.

ment des autres parties ou l'autorisation de la Cour.

Diligence raisonnable

85. Le contre-interrogatoire de l'auteur d'un affidavit est effectué avec diligence raisonnable.

Transcription d'un contre-interrogatoire

86. Sauf ordonnance contraire de la Cour, la partie qui effectue un contre-interrogatoire concernant un affidavit doit en demander la transcription, en payer les frais et en transmettre une copie aux autres parties.

Interrogatoires hors cour

Dispositions générales

Définition de « interrogatoire »

87. Dans les règles 88 à 100, « interrogatoire » s'entend, selon le cas :

a) d'un interrogatoire préalable;

b) des dépositions recueillies hors cour pour être utilisées à l'instruction;

c) du contre-interrogatoire concernant un affidavit;

d) de l'interrogatoire à l'appui d'une exécution forcée.

Mode d'interrogatoire

88. (1) Sous réserve des règles 234 et 296, l'interrogatoire se fait soit de vive voix soit par écrit.

Communication électronique

(2) La Cour peut ordonner que l'interrogatoire d'une personne hors cour soit enregistré sur cassette vidéo ou effectué par vidéo-conférence ou par tout autre moyen de communication électronique.

Interrogatoire oral

Interrogatoire oral

89. (1) La partie qui demande un interrogatoire oral paie le montant relatif à l'enregistrement déterminé selon le tarif A.

299.34 [Repealed, SOR/2007-301, s. 6]

299.35 [Repealed, SOR/2007-301, s. 6]

299.36 [Repealed, SOR/2007-301, s. 6]

299.37 [Repealed, SOR/2007-301, s. 6]

299.38 [Repealed, SOR/2007-301, s. 6]

299.39 [Repealed, SOR/2007-301, s. 6]

299.4 [Repealed, SOR/2007-301, s. 6]

299.41 [Repealed, SOR/2007-301, s. 6]

299.42 [Repealed, SOR/2007-301, s. 6]

299.34 [Abrogé, DORS/2007-301, art. 6]

299.35 [Abrogé, DORS/2007-301, art. 6]

299.36 [Abrogé, DORS/2007-301, art. 6]

299.37 [Abrogé, DORS/2007-301, art. 6]

299.38 [Abrogé, DORS/2007-301, art. 6]

299.39 [Abrogé, DORS/2007-301, art. 6]

299.4 [Abrogé, DORS/2007-301, art. 6]

299.41 [Abrogé, DORS/2007-301, art. 6]

299.42 [Abrogé, DORS/2007-301, art. 6]

PART 5

APPLICATIONS

Application of this Part

Application

300. This Part applies to

(*a*) applications for judicial review of administrative action, including applications under section 18.1 or 28 of the Act, unless the Court directs under subsection 18.4(2) of the Act that the application be treated and proceeded with as an action;

(*b*) proceedings required or permitted by or under an Act of Parliament to be brought by application, motion, originating notice of motion, originating summons or petition or to be determined in a summary way, other than applications under subsection 33(1) of the *Marine Liability Act*;

PARTIE 5

DEMANDES

Champ d'application

Application

300. La présente partie s'applique :

a) aux demandes de contrôle judiciaire de mesures administratives, y compris les demandes présentées en vertu des articles 18.1 ou 28 de la Loi, à moins que la Cour n'ordonne, en vertu du paragraphe 18.4(2) de la Loi, de les instruire comme des actions;

b) aux instances engagées sous le régime d'une loi fédérale ou d'un texte d'application de celle-ci qui en prévoit ou en autorise l'introduction par voie de demande, de requête, d'avis de requête introductif d'instance, d'assignation introductive d'instance ou de pétition, ou le règlement par procédure sommaire, à

(*c*) appeals under subsection 14(5) of the *Citizenship Act*;

(*d*) appeals under section 56 of the *Trade-marks Act*;

(*e*) references from a tribunal under rule 320;

(*f*) requests under the Commercial Arbitration Code brought pursuant to subsection 324(1);

(*g*) proceedings transferred to the Court under subsection 3(3) or 5(3) of the *Divorce Act*; and

(*h*) applications for registration, recognition or enforcement of a foreign judgment brought under rules 327 to 334.

SOR/2002-417, s. 18(E); SOR/2004-283, s. 37.

l'exception des demandes faites en vertu du paragraphe 33(1) de la *Loi sur la responsabilité en matière maritime*;

c) aux appels interjetés en vertu du paragraphe 14(5) de la *Loi sur la citoyenneté*;

d) aux appels interjetés en vertu de l'article 56 de la *Loi sur les marques de commerce*;

e) aux renvois d'un office fédéral en vertu de la règle 320;

f) aux demandes présentées en vertu du Code d'arbitrage commercial qui sont visées au paragraphe 324(1);

g) aux actions renvoyées à la Cour en vertu des paragraphes 3(3) ou 5(3) de la *Loi sur le divorce*;

h) aux demandes pour l'enregistrement, la reconnaissance ou l'exécution d'un jugement étranger visées aux règles 327 à 334.

DORS/2002-417, art. 18(A); DORS/2004-283, art. 37.

General

Contents of application

301. An application shall be commenced by a notice of application in Form 301, setting out

(*a*) the name of the court to which the application is addressed;

(*b*) the names of the applicant and respondent;

(*c*) where the application is an application for judicial review,

(i) the tribunal in respect of which the application is made, and

(ii) the date and details of any order in respect of which judicial review is

Dispositions générales

Avis de demande — forme et contenu

301. La demande est introduite par un avis de demande, établi selon la formule 301, qui contient les renseignements suivants :

a) le nom de la cour à laquelle la demande est adressée;

b) les noms du demandeur et du défendeur;

c) s'il s'agit d'une demande de contrôle judiciaire :

(i) le nom de l'office fédéral visé par la demande,

(ii) le cas échéant, la date et les particularités de l'ordonnance qui fait l'ob-

sought and the date on which it was first communicated to the applicant;

(*d*) a precise statement of the relief sought;

(*e*) a complete and concise statement of the grounds intended to be argued, including a reference to any statutory provision or rule to be relied on; and

(*f*) a list of the documentary evidence to be used at the hearing of the application.

SOR/2004-283, s. 36.

jet de la demande ainsi que la date de la première communication de l'ordonnance au demandeur;

d) un énoncé précis de la réparation demandée;

e) un énoncé complet et concis des motifs invoqués, avec mention de toute disposition législative ou règle applicable;

f) la liste des documents qui seront utilisés en preuve à l'audition de la demande.

DORS/2004-283, art. 36.

Limited to single order

302. Unless the Court orders otherwise, an application for judicial review shall be limited to a single order in respect of which relief is sought.

Limites

302. Sauf ordonnance contraire de la Cour, la demande de contrôle judiciaire ne peut porter que sur une seule ordonnance pour laquelle une réparation est demandée.

Respondents

303. (1) Subject to subsection (2), an applicant shall name as a respondent every person

(*a*) directly affected by the order sought in the application, other than a tribunal in respect of which the application is brought; or

(*b*) required to be named as a party under an Act of Parliament pursuant to which the application is brought.

Défendeurs

303. (1) Sous réserve du paragraphe (2), le demandeur désigne à titre de défendeur :

a) toute personne directement touchée par l'ordonnance recherchée, autre que l'office fédéral visé par la demande;

b) toute autre personne qui doit être désignée à titre de partie aux termes de la loi fédérale ou de ses textes d'application qui prévoient ou autorisent la présentation de la demande.

Application for judicial review

(2) Where in an application for judicial review there are no persons that can be named under subsection (1), the applicant shall name the Attorney General of Canada as a respondent.

Défendeurs — demande de contrôle judiciaire

(2) Dans une demande de contrôle judiciaire, si aucun défendeur n'est désigné en application du paragraphe (1), le demandeur désigne le procureur général du Canada à ce titre.

Substitution for Attorney General

(3) On a motion by the Attorney General of Canada, where the Court is satisfied that the Attorney General is unable or unwilling to act as a respondent after having been named under subsection (2), the Court may substitute another person or body, including the tribunal in respect of

Remplaçant du procureur général

(3) La Cour peut, sur requête du procureur général du Canada, si elle est convaincue que celui-ci est incapable d'agir à titre de défendeur ou n'est pas disposé à le faire après avoir été ainsi désigné conformément au paragraphe (2), désigner en remplace-

which the application is made, as a respondent in the place of the Attorney General of Canada.

Service of notice of application

304. (1) Unless the Court directs otherwise, within 10 days after the issuance of a notice of application, the applicant shall serve it on

(*a*) all respondents;

(*b*) in respect of an application for judicial review or an application appealing the order of a tribunal,

(i) in respect of an application other than one relating to a decision of a visa officer, the tribunal in respect of which the application is brought,

(ii) any other person who participated in the proceeding before the tribunal in respect of which the application is made, and

(iii) the Attorney General of Canada;

(*c*) where the application is made under the *Access to Information Act*, Part 1 of the *Personal Information Protection and Electronic Documents Act*, the *Privacy Act* or the *Official Languages Act*, the Commissioner named for the purposes of that Act; and

(*d*) any other person required to be served under an Act of Parliament pursuant to which the application is brought.

Motion for directions as to service

(2) Where there is any uncertainty as to who are the appropriate persons to be served with a notice of application, the applicant may bring an *ex parte* motion for directions to the Court.

ment une autre personne ou entité, y compris l'office fédéral visé par la demande.

Signification de l'avis de demande

304. (1) Sauf directives contraires de la Cour, le demandeur signifie l'avis de demande dans les 10 jours suivant sa délivrance :

a) aux défendeurs;

b) s'il s'agit d'une demande de contrôle judiciaire ou d'un appel d'une ordonnance d'un office fédéral :

(i) à l'office fédéral visé par la demande, sauf s'il s'agit d'un agent des visas,

(ii) à toute autre personne qui a participé à l'instance devant l'office fédéral visé par la demande,

(iii) au procureur général du Canada;

c) si la demande est présentée en vertu de la *Loi sur l'accès à l'information*, la *Loi sur la protection des renseignements personnels*, la partie 1 de la *Loi sur la protection des renseignements personnels et les documents électroniques* ou la *Loi sur les langues officielles*, au commissaire compétent sous le régime de cette loi;

d) à toute autre personne devant en recevoir signification aux termes de la loi fédérale ou de ses textes d'application qui prévoient ou autorisent la présentation de la demande.

Directives sur la signification

(2) En cas de doute quant à savoir qui doit recevoir signification de l'avis de demande, le demandeur peut, par voie de requête *ex parte*, demander des directives à la Cour.

Proof of service

(3) Proof of service of a notice of application shall be filed within 10 days after service of the notice of application.

SOR/2004-283, s. 16.

(3) La preuve de la signification de l'avis de demande est déposée dans les 10 jours suivant cette signification.

DORS/2004-283, art. 16.

Preuve de signification

Notice of appearance

305. A respondent who intends to appear in respect of an application shall, within 10 days after being served with a notice of application, serve and file a notice of appearance in Form 305.

SOR/2013-18, s. 7.

305. Dans les dix jours après avoir reçu signification de l'avis de demande, le défendeur qui a l'intention de comparaître signifie et dépose un avis de comparution établi selon la formule 305.

DORS/2013-18, art. 7.

Avis de comparution

Applicant's affidavits

306. Within 30 days after issuance of a notice of application, an applicant shall serve its supporting affidavits and documentary exhibits and file proof of service. The affidavits and exhibits are deemed to be filed when the proof of service is filed in the Registry.

SOR/2007-301, s. 12(F); SOR/2010-177, s. 3.

306. Dans les trente jours suivant la délivrance de l'avis de demande, le demandeur signifie les affidavits et pièces documentaires qu'il entend utiliser à l'appui de la demande et dépose la preuve de signification. Ces affidavits et pièces sont dès lors réputés avoir été déposés au greffe.

DORS/2007-301, art. 12(F); DORS/2010-177, art. 3.

Affidavits du demandeur

Respondent's affidavits

307. Within 30 days after service of the applicant's affidavits, a respondent shall serve its supporting affidavits and documentary exhibits and shall file proof of service. The affidavits and exhibits are deemed to be filed when the proof of service is filed in the Registry.

SOR/2007-301, s. 12(F); SOR/2010-177, s. 3.

307. Dans les trente jours suivant la signification des affidavits du demandeur, le défendeur signifie les affidavits et pièces documentaires qu'il entend utiliser à l'appui de sa position et dépose la preuve de signification. Ces affidavits et pièces sont dès lors réputés avoir été déposés au greffe.

DORS/2007-301, art. 12(F); DORS/2010-177, art. 3.

Affidavits du défendeur

Cross-examinations

308. Cross-examination on affidavits must be completed by all parties within 20 days after the filing of the respondent's affidavits or the expiration of the time for doing so, whichever is earlier.

308. Toute partie qui désire contre-interroger l'auteur d'un affidavit le fait dans les 20 jours suivant le dépôt des affidavits du défendeur ou dans les 20 jours suivant l'expiration du délai prévu à cette fin, selon celui de ces délais qui est antérieur à l'autre.

Contre-interrogatoires

Applicant's record

309. (1) An applicant shall serve and file the applicant's record within 20 days after the day on which the parties' cross-examinations are completed or within 20 days after the day on which the time for those cross-examinations is expired, whichever day is earlier.

309. (1) Le demandeur signifie et dépose son dossier dans les 20 jours suivant la date du contre-interrogatoire des auteurs des affidavits déposés par les parties ou dans les 20 jours suivant l'expiration du délai prévu pour sa tenue, selon celui de ces délais qui est antérieur à l'autre.

Dossier du demandeur

Number of copies

(1.1) The applicant shall file

(*a*) if the application is brought in the Federal Court, an electronic copy of or three paper copies of the record; and

(*b*) if the application is brought in the Federal Court of Appeal, an electronic copy of or five paper copies of the record.

Contents of applicant's record

(2) An applicant's record shall contain, on consecutively numbered pages and in the following order,

(*a*) a table of contents giving the nature and date of each document in the record;

(*b*) the notice of application;

(*c*) any order in respect of which the application is made and any reasons, including dissenting reasons, given in respect of that order;

(*d*) each supporting affidavit and documentary exhibit;

(*e*) the transcript of any cross-examination on affidavits that the applicant has conducted;

(*e.1*) any material that has been certified by a tribunal and transmitted under Rule 318 that is to be used by the applicant at the hearing;

(*f*) the portions of any transcript of oral evidence before a tribunal that are to be used by the applicant at the hearing;

(*g*) a description of any physical exhibits to be used by the applicant at the hearing; and

(*h*) the applicant's memorandum of fact and law.

Nombre de copies

(1.1) Le demandeur dépose :

a) une copie électronique ou trois copies papier de son dossier, s'il s'agit d'une demande présentée à la Cour fédérale;

b) une copie électronique ou cinq copies papier de son dossier, s'il s'agit d'une demande présentée à la Cour d'appel fédérale.

Contenu du dossier du demandeur

(2) Le dossier du demandeur contient, sur des pages numérotées consécutivement, les documents suivants dans l'ordre indiqué ci-après :

a) une table des matières indiquant la nature et la date de chaque document versé au dossier;

b) l'avis de demande;

c) le cas échéant, l'ordonnance qui fait l'objet de la demande ainsi que les motifs, y compris toute dissidence;

d) les affidavits et les pièces documentaires à l'appui de la demande;

e) les transcriptions des contre-interrogatoires qu'il a fait subir aux auteurs d'affidavit;

e.1) tout document ou élément matériel certifié par un office fédéral et transmis en application de la règle 318 qu'il entend utiliser à l'audition de la demande;

f) les extraits de toute transcription des témoignages oraux recueillis par l'office fédéral qu'il entend utiliser à l'audition de la demande;

g) une description des objets déposés comme pièces qu'il entend utiliser à l'audition;

h) un mémoire des faits et du droit.

Retention of original affidavits

(3) If an original affidavit is not filed as part of an applicant's record, it shall be retained by the applicant for one year after the expiry of all appeal periods.

SOR/2004-283, ss. 32, 33; SOR/2006-219, s. 10; SOR/2010-177, s. 4; SOR/2013-18, s. 8; SOR/2015-21, s. 18.

Original de l'affidavit

(3) Si le dossier du demandeur ne comprend pas l'original d'un affidavit, ce dernier conserve l'original pendant un an à compter de la date d'expiration de tous délais d'appel.

DORS/2004-283, art. 32 et 33; DORS/2006-219, art. 10; DORS/2010-177, art. 4; DORS/2013-18, art. 8; DORS/2015-21, art. 18.

Respondent's record

310. (1) A respondent to an application shall, within 20 days after service of the applicant's record, serve and file the respondent's record.

Dossier du défendeur

310. (1) Le défendeur signifie et dépose son dossier dans les 20 jours après avoir reçu signification du dossier du demandeur.

Number of copies

(1.1) The respondent shall file

(*a*) if the application is brought in the Federal Court, an electronic copy of or three paper copies of the record; and

(*b*) if the application is brought in the Federal Court of Appeal, an electronic copy of or five paper copies of the record.

Nombre de copies

(1.1) Le défendeur dépose :

a) une copie électronique ou trois copies papier de son dossier, s'il s'agit d'une demande présentée à la Cour fédérale,

b) une copie électronique ou cinq copies papier de son dossier, s'il s'agit d'une demande présentée à la Cour d'appel fédérale.

Contents of respondent's record

(2) The record of a respondent shall contain, on consecutively numbered pages and in the following order,

(*a*) a table of contents giving the nature and date of each document in the record;

(*b*) each supporting affidavit and documentary exhibit;

(*c*) the transcript of any cross-examination on affidavits that the respondent has conducted;

(*c.1*) any material that has been certified by a tribunal and transmitted under Rule 318 that is to be used by the respondent at the hearing and that is not contained in the applicant's record;

(*d*) the portions of any transcript of oral evidence before a tribunal that are to be used by the respondent at the hearing;

Contenu du dossier du défendeur

(2) Le dossier du défendeur contient, sur des pages numérotées consécutivement, les documents suivants dans l'ordre indiqué ci-après :

a) une table des matières indiquant la nature et la date de chaque document versé au dossier;

b) les affidavits et les pièces documentaires à l'appui de sa position;

c) les transcriptions des contre-interrogatoires qu'il a fait subir aux auteurs d'affidavit;

c.1) tout document ou élément matériel certifié par un office fédéral et transmis en application de la règle 318 qu'il entend utiliser à l'audition de la demande et qui n'est pas contenu dans le dossier du demandeur;

(*e*) a description of any physical exhibits to be used by the respondent at the hearing; and

(*f*) the respondent's memorandum of fact and law.

d) les extraits de toute transcription des témoignages oraux recueillis par l'office fédéral qu'il entend utiliser à l'audition de la demande;

e) une description des objets déposés comme pièces qu'il entend utiliser à l'audition;

f) un mémoire des faits et du droit.

Retention of original affidavits

(3) If an original affidavit is not filed as part of a respondent's record, it shall be retained by the respondent for one year after the expiry of all appeal periods.

SOR/2004-283, ss. 32, 33; SOR/2010-177, s. 5; SOR/2013-18, s. 9; SOR/2015-21, s. 19.

Original de l'affidavit

(3) Si le dossier du défendeur ne comprend pas l'original d'un affidavit, ce dernier conserve l'original pendant un an à compter de la date d'expiration de tous délais d'appel.

DORS/2004-283, art. 32 et 33; DORS/2010-177, art. 5; DORS/2013-18, art. 9; DORS/2015-21, art. 19.

Preparation by Registry

311. (1) On motion, the Court may order the Administrator to prepare a record on a party's behalf.

Préparation du dossier par le greffe

311. (1) La Cour peut, sur requête, ordonner à l'administrateur de préparer le dossier au nom d'une partie.

Documents to be provided

(2) A party bringing a motion for an order under subsection (1) shall provide the Administrator with the documents referred to in subsection 309(2) or 310(2), as the case may be.

Requête

(2) La partie qui présente une requête pour obtenir l'ordonnance visée au paragraphe (1) fournit à l'administrateur les documents mentionnés aux paragraphes 309(2) ou 310(2), selon le cas.

Additional steps

312. With leave of the Court, a party may

(*a*) file affidavits additional to those provided for in rules 306 and 307;

(*b*) conduct cross-examinations on affidavits additional to those provided for in rule 308; or

(*c*) file a supplementary record.

Dossier complémentaire

312. Une partie peut, avec l'autorisation de la Cour :

a) déposer des affidavits complémentaires en plus de ceux visés aux règles 306 et 307;

b) effectuer des contre-interrogatoires au sujet des affidavits en plus de ceux visés à la règle 308;

c) déposer un dossier complémentaire.

Requirement to file additional material

313. Where the Court considers that the application records of the parties are incomplete, the Court may order that other material, including any portion of a transcript, be filed.

Ordonnance de la Cour

313. Si la Cour estime que les dossiers des parties sont incomplets, elle peut ordonner le dépôt de documents ou d'éléments matériels supplémentaires, y compris toute partie de la transcription de témoignages qui n'a pas été déposée.

Requisition for hearing

314. (1) An applicant shall, within 10 days after service of the respondent's record or the expiration of the time for doing so, whichever is earlier, serve and file a requisition, in Form 314, requesting that a date be set for the hearing of the application.

Demande d'audience

314. (1) Dans les 10 jours après avoir reçu signification du dossier du défendeur ou dans les 10 jours suivant l'expiration du délai de signification de ce dossier, selon celui de ces délais qui est antérieur à l'autre, le demandeur signifie et dépose une demande d'audience, établie selon la formule 314, afin qu'une date soit fixée pour l'audition de la demande.

Contents of requisition

(2) A requisition referred to in subsection (1) shall

(*a*) include a statement that the requirements of subsection 309(1) have been satisfied and that any notice required under section 57 of the Act has been given;

(*b*) set out the place at which the hearing should be held;

(*c*) set out the maximum number of hours or days required for the hearing;

(*d*) list any dates within the following 90 days on which the parties are not available for a hearing;

(*e*) set out the name, address, telephone number and fax number of the solicitor for every party to the application or, where a party is not represented by a solicitor, the person's name, address, telephone number and any fax number; and

(*f*) indicate whether the hearing will be in English or French, or partly in English and partly in French.

Contenu

(2) La demande d'audience contient les éléments suivants :

a) une déclaration portant que les exigences du paragraphe 309(1) ont été remplies et que tout avis exigé par l'article 57 de la Loi a été donné;

b) l'endroit proposé pour l'audition de la demande;

c) le nombre maximal d'heures ou de jours prévus pour l'audition;

d) les dates où les parties ne sont pas disponibles pour l'audition au cours des 90 jours qui suivent;

e) les nom, adresse et numéros de téléphone et de télécopieur de l'avocat de chaque partie à la demande, ou ceux de la partie dans le cas où elle n'est pas représentée par un avocat;

f) la langue dans laquelle l'audition se déroulera, c'est-à-dire en français ou en anglais, ou en partie en français et en partie en anglais.

Pre-hearing conference

315. The Court may order that a conference be held in accordance with rules 258 to 267, with such modifications as are necessary.

Conférence préparatoire

315. La Cour peut ordonner la tenue d'une conférence préparatoire à l'audition d'une demande conformément aux règles 258 à 267, lesquelles s'appliquent avec les adaptations nécessaires.

Testimony regarding issue of fact

316. On motion, the Court may, in special circumstances, authorize a witness to

Témoignage sur des questions de fait

316. Dans des circonstances particulières, la Cour peut, sur requête, autoriser un témoin à témoigner à l'audience quant à

testify in court in relation to an issue of fact raised in an application.

une question de fait soulevée dans une demande.

Exceptions to General Procedure

Exceptions aux règles générales de procédure

Ex parte proceedings

316.1 Despite rules 304, 306, 309 and 314, for a proceeding referred to in paragraph 300(*b*) that is brought *ex parte*,

(*a*) the notice of application, the applicant's record, affidavits and documentary exhibits and the requisition for hearing are not required to be served; and

(*b*) the applicant's record and the requisition for hearing must be filed at the time the notice of application is filed.

SOR/2013-18, s. 10.

Instances présentées *ex parte*

316.1 Malgré les règles 304, 306, 309 et 314, s'agissant d'instances visées à l'alinéa 300*b*) qui sont présentées *ex parte* :

a) l'avis de demande, le dossier du demandeur, les affidavits et pièces documentaires du demandeur et la demande d'audience n'ont pas à être signifiés;

b) le dossier du demandeur et la demande d'audience doivent être déposés au moment du dépôt de l'avis de demande.

DORS/2013-18, art. 10.

Summary application under *Income Tax Act*

316.2 (1) Except for rule 359, the procedures set out in Part 7 apply, with any modifications that are required, to a summary application brought under section 231.7 of the *Income Tax Act*.

Demande sommaire en vertu de la *Loi de l'impôt sur le revenu*

316.2 (1) À l'exception de la règle 359, la procédure établie à la partie 7 s'applique, avec les modifications nécessaires, à la demande sommaire présentée en vertu de l'article 231.7 de la *Loi de l'impôt sur le revenu*.

Commencing the application

(2) The application shall be commenced by a notice of summary application in Form 316.2.

SOR/2013-18, s. 10.

Introduction de la demande

(2) La demande est introduite par un avis de demande sommaire établi selon la formule 316.2.

DORS/2013-18, art. 10.

Material in the Possession of a Tribunal

Obtention de documents en la possession d'un office fédéral

Material from tribunal

317. (1) A party may request material relevant to an application that is in the possession of a tribunal whose order is the subject of the application and not in the possession of the party by serving on the tribunal and filing a written request, identifying the material requested.

Matériel en la possession de l'office fédéral

317. (1) Toute partie peut demander la transmission des documents ou des éléments matériels pertinents quant à la demande, qu'elle n'a pas mais qui sont en la possession de l'office fédéral dont l'ordonnance fait l'objet de la demande, en signifiant à l'office une requête à cet effet puis en la déposant. La requête précise les documents ou les éléments matériels demandés.

Request in notice of application

(2) An applicant may include a request under subsection (1) in its notice of application.

Demande incluse dans l'avis de demande

(2) Un demandeur peut inclure sa demande de transmission de documents dans son avis de demande.

Service of request

(3) If an applicant does not include a request under subsection (1) in its notice of application, the applicant shall serve the request on the other parties.

Signification de la demande de transmission

(3) Si le demandeur n'inclut pas sa demande de transmission de documents dans son avis de demande, il est tenu de signifier cette demande aux autres parties.

SOR/2002-417, s. 19; SOR/2006-219, s. 11(F).

DORS/2002-417, art. 19; DORS/2006-219, art. 11(F).

Material to be transmitted

318. (1) Within 20 days after service of a request under rule 317, the tribunal shall transmit

(*a*) a certified copy of the requested material to the Registry and to the party making the request; or

(*b*) where the material cannot be reproduced, the original material to the Registry.

Documents à transmettre

318. (1) Dans les 20 jours suivant la signification de la demande de transmission visée à la règle 317, l'office fédéral transmet :

a) au greffe et à la partie qui en a fait la demande une copie certifiée conforme des documents en cause;

b) au greffe les documents qui ne se prêtent pas à la reproduction et les éléments matériels en cause.

Objection by tribunal

(2) Where a tribunal or party objects to a request under rule 317, the tribunal or the party shall inform all parties and the Administrator, in writing, of the reasons for the objection.

Opposition de l'office fédéral

(2) Si l'office fédéral ou une partie s'opposent à la demande de transmission, ils informent par écrit toutes les parties et l'administrateur des motifs de leur opposition.

Directions as to procedure

(3) The Court may give directions to the parties and to a tribunal as to the procedure for making submissions with respect to an objection under subsection (2).

Directives de la Cour

(3) La Cour peut donner aux parties et à l'office fédéral des directives sur la façon de procéder pour présenter des observations au sujet d'une opposition à la demande de transmission.

Order

(4) The Court may, after hearing submissions with respect to an objection under subsection (2), order that a certified copy, or the original, of all or part of the material requested be forwarded to the Registry.

Ordonnance

(4) La Cour peut, après avoir entendu les observations sur l'opposition, ordonner qu'une copie certifiée conforme ou l'original des documents ou que les éléments matériels soient transmis, en totalité ou en partie, au greffe.

Return of material

319. Unless the Court directs otherwise, after an application has been heard, the Administrator shall return to a tribunal any original material received from it under rule 318.

Documents retournés

319. Sauf directives contraires de la Cour, après l'audition de la demande, l'administrateur retourne à l'office fédéral les originaux reçus aux termes de la règle 318.

(*b*) where the order was obtained by fraud.

Effect of order

(3) Unless the Court orders otherwise, the setting aside or variance of an order under subsection (1) or (2) does not affect the validity or character of anything done or not done before the order was set aside or varied.

b) l'ordonnance a été obtenue par fraude.

Effet de l'ordonnance

(3) Sauf ordonnance contraire de la Cour, l'annulation ou la modification d'une ordonnance en vertu des paragraphes (1) ou (2) ne porte pas atteinte à la validité ou à la nature des actes ou omissions antérieurs à cette annulation ou modification.

PART 11

COSTS

Awarding of Costs Between Parties

Discretionary powers of Court

400. (1) The Court shall have full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid.

Crown

(2) Costs may be awarded to or against the Crown.

Factors in awarding costs

(3) In exercising its discretion under subsection (1), the Court may consider

(*a*) the result of the proceeding;

(*b*) the amounts claimed and the amounts recovered;

(*c*) the importance and complexity of the issues;

(*d*) the apportionment of liability;

(*e*) any written offer to settle;

(*f*) any offer to contribute made under rule 421;

(*g*) the amount of work;

(*h*) whether the public interest in having the proceeding litigated justifies a particular award of costs;

(*i*) any conduct of a party that tended to shorten or unnecessarily lengthen the duration of the proceeding;

PARTIE 11

DÉPENS

Adjudication des dépens entre parties

Pouvoir discrétionnaire de la Cour

400. (1) La Cour a le pouvoir discrétionnaire de déterminer le montant des dépens, de les répartir et de désigner les personnes qui doivent les payer.

La Couronne

(2) Les dépens peuvent être adjugés à la Couronne ou contre elle.

Facteurs à prendre en compte

(3) Dans l'exercice de son pouvoir discrétionnaire en application du paragraphe (1), la Cour peut tenir compte de l'un ou l'autre des facteurs suivants :

a) le résultat de l'instance;

b) les sommes réclamées et les sommes recouvrées;

c) l'importance et la complexité des questions en litige;

d) le partage de la responsabilité;

e) toute offre écrite de règlement;

f) toute offre de contribution faite en vertu de la règle 421;

g) la charge de travail;

h) le fait que l'intérêt public dans la résolution judiciaire de l'instance justifie une adjudication particulière des dépens;

(*j*) the failure by a party to admit anything that should have been admitted or to serve a request to admit;

(*k*) whether any step in the proceeding was

(i) improper, vexatious or unnecessary, or

(ii) taken through negligence, mistake or excessive caution;

(*l*) whether more than one set of costs should be allowed, where two or more parties were represented by different solicitors or were represented by the same solicitor but separated their defence unnecessarily;

(*m*) whether two or more parties, represented by the same solicitor, initiated separate proceedings unnecessarily;

(*n*) whether a party who was successful in an action exaggerated a claim, including a counterclaim or third party claim, to avoid the operation of rules 292 to 299;

(*n.1*) whether the expense required to have an expert witness give evidence was justified given

(i) the nature of the litigation, its public significance and any need to clarify the law,

(ii) the number, complexity or technical nature of the issues in dispute, or

(iii) the amount in dispute in the proceeding; and

(*o*) any other matter that it considers relevant.

i) la conduite d'une partie qui a eu pour effet d'abréger ou de prolonger inutilement la durée de l'instance;

j) le défaut de la part d'une partie de signifier une demande visée à la règle 255 ou de reconnaître ce qui aurait dû être admis;

k) la question de savoir si une mesure prise au cours de l'instance, selon le cas :

(i) était inappropriée, vexatoire ou inutile,

(ii) a été entreprise de manière négligente, par erreur ou avec trop de circonspection;

l) la question de savoir si plus d'un mémoire de dépens devrait être accordé lorsque deux ou plusieurs parties sont représentées par différents avocats ou lorsque, étant représentées par le même avocat, elles ont scindé inutilement leur défense;

m) la question de savoir si deux ou plusieurs parties représentées par le même avocat ont engagé inutilement des instances distinctes;

n) la question de savoir si la partie qui a eu gain de cause dans une action a exagéré le montant de sa réclamation, notamment celle indiquée dans la demande reconventionnelle ou la mise en cause, pour éviter l'application des règles 292 à 299;

n.1) la question de savoir si les dépenses engagées pour la déposition d'un témoin expert étaient justifiées compte tenu de l'un ou l'autre des facteurs suivants :

(i) la nature du litige, son importance pour le public et la nécessité de clarifier le droit,

(ii) le nombre, la complexité ou la nature technique des questions en litige,

(iii) la somme en litige;

o) toute autre question qu'elle juge pertinente.

Tariff B

(4) The Court may fix all or part of any costs by reference to Tariff B and may award a lump sum in lieu of, or in addition to, any assessed costs.

(4) La Cour peut fixer tout ou partie des dépens en se reportant au tarif B et adjuger une somme globale au lieu ou en sus des dépens taxés.

Tarif B

Directions re assessment

(5) Where the Court orders that costs be assessed in accordance with Tariff B, the Court may direct that the assessment be performed under a specific column or combination of columns of the table to that Tariff.

(5) Dans le cas où la Cour ordonne que les dépens soient taxés conformément au tarif B, elle peut donner des directives prescrivant que la taxation soit faite selon une colonne déterminée ou une combinaison de colonnes du tableau de ce tarif.

Directives de la Cour

Further discretion of Court

(6) Notwithstanding any other provision of these Rules, the Court may

(*a*) award or refuse costs in respect of a particular issue or step in a proceeding;

(*b*) award assessed costs or a percentage of assessed costs up to and including a specified step in a proceeding;

(*c*) award all or part of costs on a solicitor-and-client basis; or

(*d*) award costs against a successful party.

(6) Malgré toute autre disposition des présentes règles, la Cour peut :

a) adjuger ou refuser d'adjuger les dépens à l'égard d'une question litigieuse ou d'une procédure particulières;

b) adjuger l'ensemble ou un pourcentage des dépens taxés, jusqu'à une étape précise de l'instance;

c) adjuger tout ou partie des dépens sur une base avocat-client;

d) condamner aux dépens la partie qui obtient gain de cause.

Autres pouvoirs discrétionnaires de la Cour

Award and payment of costs

(7) Costs shall be awarded to the party who is entitled to receive the costs and not to the party's solicitor, but they may be paid to the party's solicitor in trust.

SOR/2002-417, s. 25(F); SOR/2010-176, s. 11.

(7) Les dépens sont adjugés à la partie qui y a droit et non à son avocat, mais ils peuvent être payés en fiducie à celui-ci.

DORS/2002-417, art. 25(F); DORS/2010-176, art. 11.

Adjudication et paiement des dépens

Costs of motion

401. (1) The Court may award costs of a motion in an amount fixed by the Court.

401. (1) La Cour peut adjuger les dépens afférents à une requête selon le montant qu'elle fixe.

Dépens de la requête

Costs payable forthwith

(2) Where the Court is satisfied that a motion should not have been brought or opposed, the Court shall order that the costs of the motion be payable forthwith.

Paiement sans délai

(2) Si la Cour est convaincue qu'une requête n'aurait pas dû être présentée ou contestée, elle ordonne que les dépens afférents à la requête soient payés sans délai.

Costs of discontinuance or abandonment

402. Unless otherwise ordered by the Court or agreed by the parties, a party against whom an action, application or appeal has been discontinued or against whom a motion has been abandoned is entitled to costs forthwith, which may be assessed and the payment of which may be enforced as if judgment for the amount of the costs had been given in favour of that party.

Dépens lors d'un désistement ou abandon

402. Sauf ordonnance contraire de la Cour ou entente entre les parties, lorsqu'une action, une demande ou un appel fait l'objet d'un désistement ou qu'une requête est abandonnée, la partie contre laquelle l'action, la demande ou l'appel a été engagé ou la requête présentée a droit aux dépens sans délai. Les dépens peuvent être taxés et le paiement peut en être poursuivi par exécution forcée comme s'ils avaient été adjugés par jugement rendu en faveur de la partie.

Motion for directions

403. (1) A party may request that directions be given to the assessment officer respecting any matter referred to in rule 400,

(*a*) by serving and filing a notice of motion within 30 days after judgment has been pronounced; or

(*b*) in a motion for judgment under subsection 394(2).

Requête pour directives

403. (1) Une partie peut demander que des directives soient données à l'officier taxateur au sujet des questions visées à la règle 400 :

a) soit en signifiant et en déposant un avis de requête dans les 30 jours suivant le prononcé du jugement;

b) soit par voie de requête au moment de la présentation de la requête pour jugement selon le paragraphe 394(2).

Motion after judgment

(2) A motion may be brought under paragraph (1)(*a*) whether or not the judgment included an order concerning costs.

Précisions

(2) La requête visée à l'alinéa (1)*a*) peut être présentée que le jugement comporte ou non une ordonnance sur les dépens.

Same judge or prothonotary

(3) A motion under paragraph (1)(*a*) shall be brought before the judge or prothonotary who signed the judgment.

Présentation de la requête

(3) La requête visée à l'alinéa (1)*a*) est présentée au juge ou au protonotaire qui a signé le jugement.

Liability of solicitor for costs

404. (1) Where costs in a proceeding are incurred improperly or without reasonable cause or are wasted by undue delay or other misconduct or default, the Court may make an order against any solicitor whom it considers to be responsible, whether personally or through a servant or agent,

Responsabilité de l'avocat

404. (1) Lorsque, dans une instance, des frais ont été engagés abusivement ou sans raison valable ou que des frais ont été occasionnés du fait d'un retard injustifié ou de quelque autre inconduite ou manquement, la Cour peut rendre l'une des ordonnances suivantes contre l'avocat qu'elle considère comme responsable, qu'il