

File Number:

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

BETWEEN:

DUFF CONACHER and DEMOCRACY WATCH

Applicants

- and -

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

Respondents

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

Take notice that the Applicant, Democracy Watch, hereby applies for leave to appeal to the Court, pursuant to section 43 of the *Supreme Court Act*, from the judgment of the Federal Court of Appeal File No. A-427-09 made May 25, 2010;

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

1. That this first-ever proceeding concerning compliance with the fixed-election-date provisions added by Parliament and the Governor General to the *Canada Elections Act* (“Act”) in May 2007 is of public and national importance for the following reasons:

- (a) the proceeding raises fundamental questions about the proper scope, interpretation and application of the provisions, and properly answering these questions is essential to determining whether the provisions restrict the power of the Prime Minister and several premiers to call “snap” elections during the four-year time period in between the statutory fixed date for election day;
- (b) seven provinces and the Northwest Territories have fixed-election-date provisions in their

provincial election laws worded almost exactly the same as the provisions in the *Canada Elections Act*, and four provinces and the Northwest Territories have called elections in compliance with their statutory fixed election dates;

- (c) the Federal Court of Appeal ruled that the provisions in the *Canada Elections Act* do not restrict the Prime Minister from advising the Governor General of Canada to call a “snap” election in between the statutory fixed election date, and as a result the Federal Court of Appeal has, effectively, ruled that none of the provisions in the laws of the seven provinces and the Northwest Territories restrict any premier from similarly calling a “snap” election;
- (c) according to members of Parliament and members of the legislatures in seven provinces and the Northwest Territories, compliance by the Prime Minister and the premiers with the provisions is a key part of ensuring fair elections;
- (d) the case concerns the first instance of a Prime Minister or Premier calling a “snap” election during the time period in between the fixed date for elections, namely the federal election called in September 2008 by Prime Minister Harper with voting day in October 2008 in non-compliance with the provisions in the *Canada Elections Act* which fixed the date of the next election for October 2009;
- (e) the case also concerns the constitutional conventions that apply to the legal roles and relationship of the Prime Minister and the Governor General, and by extension the conventions that apply to the roles and relationship of premiers and lieutenant governors -- the status, application and operation of those conventions have been rarely ruled on by the courts (and, in fact, the Federal Court of Appeal did not cite any precedents in the section of its judgment on the issue of the conventions), and;
- (f) the case also concerns the extent and application of the fundamental right of voters and interest groups to fair elections under s. 3 of the *Canadian Charter of Rights to Freedoms* (the “Charter”), and this issue has rarely been ruled on by the courts (and, in fact, the Federal Court of Appeal cited only one precedent in the section of its judgment on the *Charter* issue, and that precedent only applied to the issue of standing of the applicants).

2. That the Federal Court of Appeal erred in law in its May 25, 2010 judgment from the bench when it ruled that the provincial law and government precedents, and the debates in Parliament and adding of the provisions to the *Canada Elections Act* in May 2007 by Parliament and the Governor General, did not create a constitutional convention that restricts the Prime Minister from advising the Governor General to call a “snap” election in between the statutory fixed election date. The Federal Court of Appeal also erred when it failed to rule that Prime Minister Stephen Harper violated the convention when he advised the calling of a snap election in September 2008.

3. That the Federal Court of Appeal erred in law in its May 25, 2010 judgment from the bench

when it ruled that the Prime Minister advising the Governor General to call a “snap” election in September 2008 did not violate the right to fair elections shared by voters, interest groups, and political parties under section 3 of the *Charter*. The Federal Court of Appeal also erred in ruling that the applicants were not sufficiently representative to have full standing to litigate those rights;

4. That the Federal Court of Appeal erred in law in its May 25, 2010 judgment from the bench when it ruled that the provisions added to the *Canada Elections Act* in May 2007 do not restrict the Prime Minister from advising the Governor General to call a “snap” election in between the statutory fixed election date, and erred when it ruled that Prime Minister Stephen Harper did not violate the provisions when he advised the calling of a snap election in September 2008.

5. That the Federal Court of Appeal’s judgment thereby sets a precedent that is of public and national importance because it fundamentally undermines the purpose, application and enforcement of not only the federal statutory fixed-election date provisions but also similarly worded provincial and territorial statutory fixed-election date provisions.

Dated at Ottawa, Ontario this day of September, 2010.

Signed by

Applicant

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NOTICE TO THE RESPONDENT: A respondent may serve and file a memorandum in response to this application for leave to appeal within 30 days after service of the application. If no response is filed within that time, the Registrar will submit this application for leave to appeal to the Court for consideration pursuant to section 43 of the Supreme Court Act.