

Application for Standing for the Part II Policy Review of the Oliphant Commission

(Democracy Watch - January 15, 2009)

I. Application by Democracy Watch for Standing As a Party or Intervenor in the Part II Policy Review of the Oliphant Commission

A. Summary of Application to be Party or Intervenor in the Policy Review

The Policy Review will examine the ethics rules and enforcement of those rules for federal politicians under section 14, and the correspondence-handling procedures for Cabinet offices under section 17, of the Commission's Terms of Reference.

Democracy Watch is applying for standing as a party to, or intervenor in, Part II, the Policy Review of the Oliphant Commission under section F of the Commission's *Rules of Procedure and Practice* (the *Rules*) for the following reasons:

- as an organization that strives to represent, and has represented since 1993, the interests of citizens in government policy-making processes, Democracy Watch is applying to be a party to the Commission because its position is that, given the powers of federal politicians, citizens of Canada, the public as a whole, will be directly and substantially affected by the Policy Review;
- in addition, Democracy Watch is also applying to be a party because it is unclear under section 65 of the *Rules* whether the Commissioner will grant to parties and intervenors the same terms of participation, and allow parties and intervenors to participate in the same parts of the Policy Review in the same nature and to the same extent;
- however, if the Commission determines that its definition of "directly and substantially affected" means that the Policy Review will only affect federal politicians and public servants, and if the Commissioner intends to ensure no significant difference in the participation rights under section 65 of parties vs. intervenors (or, at the very least, no significant difference in Democracy Watch's participation rights), in the alternative Democracy Watch applies to be an intervenor in the Policy Review;
- as the leading research and advocacy organization in Canada since 1993 on issues concerning, and enforcement of, Canada's federal ethics rules, and as a leading organization through the same time period on the issues of information management and investigation procedures within government, Democracy Watch not only has a genuine concern about the issues to be addressed by the Policy Review, but also has a particular perspective and expertise that will assist the Commissioner.

B. Application to be a Party to the Policy Review of the Commission

Given the power of federal politicians to make decisions that affect all Canadians, their ethical conduct in making such decisions is of direct and substantial interest to every member of the public.

In the leading Supreme Court of Canada case on these issues, *R. v. Hinchey* [1996] 3 S.C.R. 1128, the majority judgment stated at paragraph 14 that:

"It is hardly necessary for me to expand on the importance of having a government which demonstrates integrity. Suffice it to say that our democratic system would have great difficulty functioning efficiently if its integrity was constantly in question. . . . I would merely add that the importance of preserving integrity in the government has arguably increased given the need to maintain the public's confidence in government in an age where it continues to play an ever increasing role in the quality of everyday people's lives."

And at paragraph 18:

"In my view, given the heavy trust and responsibility taken on by the holding of a public office or employ, it is appropriate that government officials are correspondingly held to codes of conduct which, for an ordinary person, would be quite severe."

While the minority judgment stated at paragraph 94:

"The magnitude and importance of government business requires not only the complete integrity of government employees and officers conducting government business but also that this integrity and trustworthiness be readily apparent to society as a whole."

The power of politicians, and the importance of government business, is reason enough for the Commission to grant "the public" standing as a party to the Policy Review.

Since 1993, Democracy Watch has been the leading, and in many ways only, active citizen organization in Canada on the issues concerning, and enforcement of, Canada's federal ethics rules.

Democracy Watch has participated in every policy-making process since 1993 concerning Canada's federal ethics rules, and most of the changes made to the rules during the past 15 years have been based upon proposals advocated by Democracy Watch.

Democracy Watch organized in 1999-2000, and has coordinated since, the Government Ethics Coalition and Money in Politics Coalition, which are made up of a total of more than 70

citizen organizations from across Canada which have a total membership of more than 3.2 million Canadians.

As a result of the above, Democracy Watch has been since 1993, and is, in effect, the main citizen/public representative on the issues concerning, and enforcement of, Canada's federal ethics rules.

For these reasons, Democracy Watch applies to be a party to the Part II Policy Review.

C. Application to be a Party to the Policy Review of the Commission

Democracy Watch has completed the only comprehensive public review of the "loopholes" and gaps in Canada's federal ethics rules and the enforcement system for the rules.

Democracy Watch is the only organization that has filed and pursued judicial review applications concerning the enforcement of Canada's federal ethics rules. Democracy Watch has filed and pursued a total of eight such applications.

Democracy Watch has filed and pursued many more complaints than anyone or any entity with the relevant enforcement tribunals concerning violations of, and lack of proper enforcement of, Canada's federal ethics rules.

As a result, Democracy Watch has the most extensive knowledge of ethics rules and the enforcement system for such rules in Canada.

Democracy Watch has also been the leading public and media commentator since 1993 on issues concerning, and enforcement of, Canada's federal ethics rules (and provincial, territorial and municipal ethics rules).

D. Evidence in Support of Application

Links to all of the documents that detail the history of Democracy Watch's participation in policy-making processes since 1993 concerning Canada's federal ethics rules, and role as the leading researcher, advocate, complainant, litigant and public commentator on the rules, can be seen on the following webpages:

<http://www.dwatch.ca/camp/ethicdir.html>

AND

<http://www.dwatch.ca/camp/moneydir.html>

E. Note Concerning Availability for Hearing on Standing

Please note that I am not available on January 21, 2009 for the hearing on standing for the Part II - Policy Review, but am available on January 22 or 23, 2009.

Submitted by:

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