

***IN THE MATTER OF THE COMMISSION OF INQUIRY INTO
THE SPONSORSHIP PROGRAM AND ADVERTISING ACTIVITIES,
Issued Under Part 1, of The Inquiries Act, R.S.C. 1985, Chapter 1 - 11, as
Amended.***

NOTICE OF MOTION

TAKE NOTICE that Joseph Charles Guité will make a motion to the Commission of Inquiry into the Sponsorship Program and Advertising Activities (the "Inquiry"), pursuant to the Commission's *Rules of Procedure and Practice* on Monday March 21st, 2005 at 9:30 a.m or on such alternative date and time to be fixed by the Honourable Justice John Gomery for an Order:

- a) that the hearing of this motion be held in camera and subject to an order prohibiting the disclosure, publication or communication of all submissions and evidence referred to;
- b) that all evidence of Joseph Charles Guité and any other witness who may give evidence that could compromise Mr. Guité's right to a fair trial be held in camera;

- c) prohibiting the disclosure, publication or communication of the testimony or any evidence given by Joseph Charles Guité or any other witness that may give evidence that could compromise Mr. Guité's right to a fair trial until after the final disposition of Joseph Charles Guité's outstanding criminal charges.

- d) postponing the testimony of Joseph Charles Guité or any other witness who may give evidence that could compromise Mr. Guité's right to a fair trial until the final disposition of Mr. Guité's outstanding criminal charges;

- e) abridging the time for service and filing of this Notice of Application and supporting materials, if necessary; and

- f) such further and other relief requested.

THE GROUNDS FOR THIS APPLICATION ARE:

Mr. Guité is compelled to testify at the Commission of Inquiry into the Sponsorship Program and Advertising Activities

1. On July 5, 2004, the Honourable Justice Gomery granted Mr. Guité full standing as a party at the Commission of Inquiry into the Sponsorship Program and Advertising Activities ("Inquiry").
2. In his Ruling on Standing, the Honourable Justice Gomery, determined that Mr. Guité's reputation is at risk, and that he has a direct interest in the issues to be dealt with by the Inquiry, which is apparent and substantial.
3. Mr. Guité has been subpoenaed to testify before the Inquiry pursuant to a subpoena, issued by the Honourable Justice Gomery, on the 27th day of April, 2004, in Montreal.
4. Until August, 1999, Mr. Guité was a senior public servant involved in aspects of government advertising, sponsorship contracts, and public

opinion research. Since the commencement of the Inquiry, Mr. Guité has been generally recognized as a "central figure" with respect to many of the issues within the mandate of the Inquiry.

5. On May 6, 2004, the Deputy Attorney General signed a Direct Indictment alleging that Mr. Guité committed criminal offences while he was a senior public servant responsible for the Sponsorship Program. Mr. Guité cannot elect to be tried by judge alone, but rather must be tried by a judge and jury.
6. Mr. Guité's criminal trial is scheduled to commence May 2, 2005.

Inextricable overlap between the Inquiry and the Criminal Proceedings

7. On May 7, 2004, the Honourable Justice Gomery provided an Opening Statement which contained an Issues List defining the issues to be considered in the Inquiry. The Issues List of Phase 1 A and Phase 1 B discloses an Inquiry into concerns invariably involving Mr. Guité during his tenure as a public servant.

8. There is a direct overlap between the issues within the mandate of the Honourable Justice Gomery and the issues which form the subject matter of the criminal allegations before the Quebec Superior Court.
9. The criminal allegations are inextricably linked to the problems and issues identified by the Office of the Auditor General in the May, 2002 Report and in the subsequent November, 2003 Report. It is inevitable that the subject matter of questions which will be put to Mr. Guité at the Inquiry will overlap with the substance of the evidence which can reasonably be anticipated will be led by the Crown Attorney at the criminal trial.

Pre-trial Publicity

10. One effect of the Direct Indictment is that Mr. Guité is deprived of a right to elect to be tried before a judge alone, rather than a judge and jury. Mr. Guité must be tried by a judge and jury.
11. Compelling Mr. Guité to testify before this Commission of Inquiry and/or the publication of Mr. Guité's testimony, prior to the completion of his criminal trial will:

- a) likely result in the widespread publication of Mr. Guité's testimony in whole or in part. Mr. Guité's testimony will likely be read by potential jurors and there is a real risk that this will prejudice the likelihood of a fair criminal trial;
- b) infringe or is likely to infringe Mr. Guité's right to a fair trial under section 11(d) of the *Canadian Charter of Rights and Freedoms*;
- c) infringe or is likely to infringe Mr. Guité's right to silence or the right against self- incrimination under section 7 of the *Canadian Charter of Rights and Freedoms*.

12. The orders sought represent the most fair and efficient means of protecting constitutional rights during the continuing Commission of Inquiry and the concurrent criminal proceedings.

IN SUPPORT OF THIS APPLICATION, THE APPLICANT RELIES UPON THE FOLLOWING:

1. The Affidavit of Michael Edelson sworn on the 22nd day of October, 2004;
2. A Compendium containing media reports relating to Mr. Guité and the Sponsorship Inquiry;
3. Any *viva voce* or documentary evidence already tendered before the Commission of Inquiry;
4. The *Rules of Procedure and Practice* of the Commission of Inquiry into the Sponsorship Program and Advertising Activities.

THE RELIEF SOUGHT IS:

1. An Order granting the Application on behalf of Joseph Charles Guité for the relief sought.

*THE APPLICANT MAY BE SERVED WITH DOCUMENTS PERTINENT TO THIS
APPLICATION:*

1. By service through his counsel, Michael D. Edelson or Richard Auger,
Edelson & Associates Barristers and Solicitors, Suite 600, 200 Elgin
Street, Ottawa, Ontario, K2P 1L5, tel. (613) 237-2290, fax (613)
237-0071.

DATED at the City of Ottawa, this 16th day of March, 2005.

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Counsel for Charles Guité

TO: The Commission of Inquiry into
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AND TO: Bernard A. Roy, Q.C.
Commission Counsel to the
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AND TO: All Parties to the Commission of Inquiry