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June 29, 2023 29 juin 2023			
Samantha Chojnacki			
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Court File No. A-

FEDERAL COURT OF APPEAL

BETWEEN:

Noel **SINCLAIR**

Appellant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at *Ottawa*.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, **WITHIN 10 DAYS** of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341 prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date:

Issued by _____

TO:

David Lametti
Attorney General of Canada
Per: **Michael Roach**
Department of Justice
Civil Litigation Department
50 O'Connor Street, Suite 500
Ottawa, ON K1A 0H8

Tel: 613-670-6319
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AND TO:

Public Service Commission
22 Eddy Street
Gatineau, Quebec
K1A 0M7

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the Judgement of Madam Justice Lobat Sadrehashemi (the “Application Judge”) dated May 30, 2023 which dismissed the Appellant’s Application for Judicial Review of the decision of the Public Service Commission (“PSC”) dated March 16, 2021. The PSC’s decision barred the Appellant from seeking nomination and being a candidate in the Yukon territorial election held on April 12, 2021.

THE APPELLANT ASKS FOR:

1. This Court to allow the appeal;
2. The Judgement of the Application Judge to be set aside;
3. An order setting aside the PSC decision and declaring that the Appellant was entitled to seek nomination and be a candidate in the Yukon territorial election held on April 12, 2021;
4. A declaration that the PSC’s decision disproportionately impacted the Appellant’s rights under the *Canadian Charter of Rights and Freedoms* (“the Charter”);
5. A declaration that, with the exception of the Director of Public Prosecution and the Deputy Directors of Public Prosecutions, a federal crown prosecutor is presumptively permitted to seek nomination as a candidate in a federal, provincial, or territorial election and/or be a candidate in a federal, provincial, or territorial election;
6. An order that, prior to issuing any decision contrary to that presumption, the PSC must refer that determination to this Court under s. 18(3)(1) of the *Federal Courts Act* on the issue of whether the PSC’s proposed disposition disproportionately impacts the prosecutor’s *Charter* rights;
7. The costs of this Appeal; and
8. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS OF THE APPEAL ARE AS FOLLOWS:

Background

1. The Appellant, Noel Sinclair (“Mr. Sinclair”), is a lawyer employed with the Public Prosecution Service of Canada (“PPSC”) in Whitehorse, Yukon. He holds the title of General Counsel.
2. Mr. Sinclair requested permission from the PSC to seek nomination and be a candidate in the electoral district of Takhini-Kopper King in the Yukon territorial election that was held on April 12, 2021. Mr. Sinclair was required to seek this permission in accordance with s. 114 of the *Public Service Employment Act*, SC 2003, c 22, ss 12, 13. Mr. Sinclair had the approval of his immediate supervisor with the PPSC. The Director of Public Prosecution had also suggested some mitigating measures to ensure that Mr. Sinclair could return to work if he was unsuccessful in the election without impairing the principle of political impartiality in the public service.
3. Notwithstanding that support, the PSC refused to permit Mr. Sinclair to seek nomination or run as a candidate in the Yukon territorial election.

Grounds for Application for Judicial Review

4. Mr. Sinclair brought an application for judicial review on the following grounds:
 - a. The PSC erred in law and/or came to an unreasonable conclusion by denying Mr. Sinclair’s request. The PSC erred in law and/or came to an unreasonable conclusion by finding that seeking the nomination or running as a candidate in the Yukon territorial election would impair, or be perceived to impair, Mr. Sinclair’s ability to perform his duties in a politically impartial manner.
 - b. The PSC erred in law and/or came to an unreasonable conclusion by rendering a decision that violates ss. 2(b), 2(d), 3, and 7 of the *Charter*.

- c. The PSC erred in law and/or came to an unreasonable conclusion by placing an additional burden on Mr. Sinclair because of his duty of loyalty to his client (i.e., the Crown).
5. The Application Judge dismissed the Application for Judicial Review on May 30, 2023.

Grounds of Appeal

6. The Application Judge erred in law and/or made a palpable and overriding error with respect to their application of the test for mootness. Specifically, the Application Judge made palpable and overriding errors by finding:
 - a. there was no live controversy;
 - b. there was no benefit or reason to decide the matter;
 - c. that the evidence on Mr. Sinclair's future political plans was limited; and
 - d. that the remedies sought were inappropriate.
7. The Application Judge erred in law and/or made palpable and overriding errors by declining to exercise their discretion to decide the Application for Judicial Review on its merits. Specifically, the Application Judge made palpable and overriding errors by:
 - a. failing to consider how this renders PSC decisions immune from judicial oversight;
 - b. finding that the evidence on Mr. Sinclair's future political plans was limited;
 - c. finding that the remedies sought were inappropriate; and
 - d. finding there was no practical utility to deciding the matter on its merits.

8. Given the above errors of law and/or palpable and overriding errors, the Appellant seeks the remedies sought in its application for judicial review.

Date: June 29, 2023



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Solicitors for the Appellant