

COURT FILE NUMBER 1901-16255

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT ECOJUSTICE CANADA SOCIETY

RESPONDENTS HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA, the LIEUTENANT GOVERNOR IN COUNCIL, the MINISTER OF JUSTICE AND SOLICITOR GENERAL FOR ALBERTA, and JACKSON STEPHENS ALLAN in his capacity as Commissioner under the *Public Inquiries Act*

DOCUMENT **APPLICATION BY ECOJUSTICE CANADA SOCIETY FOR INTERLOCUTORY INJUNCTION**

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Clerk's Stamp

NOTICE TO RESPONDENT(S): HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA, the LIEUTENANT GOVERNOR IN COUNCIL, the MINISTER OF JUSTICE AND SOLICITOR GENERAL FOR ALBERTA, and JACKSON STEPHENS ALLAN in his capacity as Commissioner under the *Public Inquiries Act*

This application is made against you. You are a respondent. You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date: July 31, 2020
Time: 10:00 a.m.
Where: Calgary
Before Whom: Justice in Chambers

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. The Applicant seeks an Order staying all further proceedings of the Public Inquiry ordered by Order in Council 125/2019, as amended by Order in Council 191/2020, until the Court has disposed of the application for judicial review in this Court file number 1901-16255.

Grounds for making this application:

2. On July 4, 2019, the Lieutenant Governor in Council approved Order in Council 125/2019 ordering a public inquiry into alleged anti-Alberta energy campaigns supported by foreign organizations (“Inquiry”), relying on section 2 of the *Public Inquiries Act*, RSA 2000, c P-39.
3. On November 19, 2019, the Applicant filed an Originating Application for Judicial Review alleging that:
 - a. the Inquiry has been brought for an improper purpose and is *ultra vires* of the authority granted to the Lieutenant Governor in Council under section 2 of the *Public Inquiries Act*;
 - b. certain matters identified in Order in Council 125/2019 and the appended Terms of Reference are matters of exclusive federal jurisdiction and therefore are *ultra vires* of the jurisdiction of the Lieutenant Governor in Council to so order; and
 - c. Order in Council 125/2019 and the Terms of Reference, the political context of the Inquiry, and the Inquiry commissioner’s political donations lead to a reasonable apprehension of bias.
4. Pursuant to the Inquiry Terms of Reference, the Inquiry commissioner was to submit an interim report to the Minister of Energy no later than January 31, 2020 and to submit a final report to the Minister no later than July 2, 2020.

5. The Inquiry commissioner submitted his interim report to the Minister on January 31, 2020. The interim report has not been made public.
6. From the commencement of the Inquiry to the current date, the Inquiry has not published any rules of procedure, has not created a public record of submissions to or evidence before the Inquiry, and has not made public any list of who the Commissioner has spoken with in respect to the matters that are the subject of the Inquiry. At no time has the Inquiry set forth a process for advising organizations of the evidence before the Inquiry or the process for testing or responding to any allegations raised in such evidence.
7. The hearing of the application for judicial review was scheduled for hearing on April 21-22, 2020. Those hearing dates were adjourned *sine die* on the order of the Court due to the Covid-19 pandemic.
8. On June 25, 2020, the Lieutenant Governor in Council approved Order in Council 191/2020 amending certain of the Terms of Reference, including extending the deadline for the Inquiry commissioner to submit his final report to the Minister to no later than October 30, 2020.
9. On or about June 25, 2020, a statement was added to the Inquiry website stating that:

In its work to date, the Inquiry has conducted more than 100 interviews with academics, researchers, industry officials, environmentalists, not-for-profit organizations and members of Indigenous communities to gather a variety of views. It has researched voluminous records of charitable grants, tax filings and public records of organizations. In the next stage of the Inquiry's process, the Commissioner will afford parties an opportunity to consider and respond to relevant material collected through the research and investigative work to date. The Commissioner expects to be providing further information on the specific process to be followed in the near future.
10. A date has not yet been set for the hearing of the application for judicial review.
11. The Applicant, and other organizations subject to the Inquiry, now face the prospect of having to respond to the public release of evidence or submissions made to the Inquiry that may be harmful to their reputation and prejudicial to their position in the application for judicial review, under a yet to be determined process. The Applicant and other organizations have, throughout the Inquiry process, had no opportunity to review, test or respond to such evidence despite several requests to the commissioner to set out a process to do so. The Inquiry commissioner has also not made any determination with respect to the Applicant's allegations of improper purpose, bias or jurisdiction.
12. Irreparable reputational harm may be inflicted on the Applicant and other organizations by the release of unproven evidence with no procedural protections in place. Further, irreparable reputational harm may be inflicted on the Applicant and other organizations

by allowing an Inquiry to proceed that may in the end turn out to be void *ab initio*. The potential harm to the Applicant and other organizations far outweighs whatever public interest there may be in concluding the Inquiry by an arbitrary date.

13. The Applicant therefore requests an order staying all further proceedings of the Inquiry until the Court has disposed of the application for judicial review in this matter.

Material or evidence to be relied on:

14. The Applicant intends to rely on:
 - a. Orders in Council 125/2019 and 191/2020;
 - b. The pleadings in the Originating Application for Judicial Review, Court file number 1901-16255;
 - c. The affidavit of Devon Page, affirmed July 15, 2020;
 - d. Such further and other material as counsel may advise and this Honourable Court may permit.

Applicable rules:

15. Rule 1.3 and Part 6 of the Alberta *Rules of Court*;
16. Such further and other Rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

17. The *Public Inquiries Act*, RSA 2000, c P-39.
18. Such further and other Acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

19. None

How the application is proposed to be heard or considered:

20. In person by video or teleconference, before the Justice hearing the Originating Application for Judicial Review.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.