

COMMISSION OF INQUIRY INTO THE SPONSORSHIP PROGRAM AND ADVERTISING ACTIVITIES

NOTICE OF MOTION

THE RIGHT HONOURABLE JEAN CHRÉTIEN will make a motion to the Commissioner on Monday, January 31, 2005, or on an earlier date to be fixed by the Commission.

THE MOTION SEEKS a decision from the Commissioner, the Honourable John Gomery, recusing himself from continuing to act as the Commissioner in this Commission of Inquiry.

THE GROUNDS FOR THE MOTION ARE AS FOLLOWS:

1. The Commissioner gave interviews to journalists on December 16 and 17, 2004.
2. During the course of those interviews, the Commissioner made a number of statements, intending them to be given wide publicity in the media.
3. On January 11, 2005, counsel for the Right Honourable Jean Chrétien brought to the attention of the Commissioner these statements, and asked him for an explanation of what his intentions were in making the statements and what his intentions were for the future course of this Inquiry. Following that submission, the Commissioner made certain statements.

4. On Thursday, January 13, 2005, an official spokesperson for the Commission of Inquiry told a journalist for the *Toronto Star* that the Commissioner was receiving “expressions of support from across Canada” following the submissions made by counsel for Mr. Chrétien, and told the reporter that these expressions of support for the Commissioner questioned “Chrétien’s motivation”. The spokesperson stated:

People are saying in the emails “What’s Chrétien got to hide?”

5. On January 13, 2005, two days after the submissions were made by Mr. Scott, the Commissioner made the following statement to a witness:

Monsieur Beaudoin, je vous demande une exercice d’imagination, même de spéculation parce que nous ne sommes pas dans une cour de droit ici. On est permis un petit peu de spéculer ou de tirer des conclusions selon les présomptions.

6. The statements made by the Commissioner in the press interviews in December 2004, his response to the submissions of counsel for the Right Honourable Jean Chrétien on January 11, 2005, the official spokesperson’s remarks to the journalist on January 13, 2005, and his comments to the witness of January 13, 2005 are such that there is a reasonable apprehension of bias on the part of the Honourable John Gomery such that it would be fundamentally unfair for him to continue to act as the Commissioner, and the parties to the Commission would be denied procedural fairness were he to do so.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the Affidavit of Jacqueline Chernys, sworn January 24, 2005;
- (b) transcripts of the proceedings before the Commission of Inquiry as follows:
 - (i) Volume 1, September 7, 2004, page 17 to page 19;
 - (ii) Volume 19, October 5, 2004, page 2730 to page 2740;

- (iii) Volume 29, October 27, 2004, page 4917 to page 4926;
- (iv) Volume 34, November 4, 2004, page 5925 to page 5930;
- (v) Volume 53, January 11, 2005, page 9082 to page 9108; and
- (vi) Volume 55, January 13, 2005, page 9657 to page 9662.

DATE: January 24, 2005

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and

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Bernard Roy, Commission Counsel
Neil Finkelstein, Co-Counsel
Guy Cournoyer, Co-Counsel

AND TO: All other parties to the Inquiry

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