

Court File No.: T-1657-13

**FEDERAL COURT**

BETWEEN:

ROCCO GALATI, and  
CONSTITUTIONAL RIGHTS CENTRE INC.,



- and -

THE RIGHT HONOURABLE STEPHEN HARPER, HIS EXCELLENCY THE RIGHT  
HONOURABLE GOVERNOR GENERAL DAVID JOHNSTON,  
THE RIGHT HONOURABLE BEVERLEY MCLACHLIN, CHIEF JUSTICE OF CANADA,  
THE HONOURABLE JUSTICE MARC NADON,  
JUDGE OF THE FEDERAL COURT OF APPEAL,  
THE ATTORNEY GENERAL OF CANADA, and THE MINISTER OF JUSTICE

Respondents

**NOTICE OF APPLICATION**  
(pursuant to ss. 18 – 18.1 Federal Courts Act, and  
ss. 24(1) and 52 of the Constitution Act, 1982)

**TO THE RESPONDENTS:**

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

**THIS APPLICATION** 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 applicant. The applicant requests that this application be heard at **Toronto, Ontario**.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the **Federal Court Rules, 1998** and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** of being served with this notice of application.

Copies of the **Federal Court Rules, 1998**, 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 APPLICATION, JUDGMENT MAY BE GIVEN  
IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

DATED at Toronto on this 7<sup>th</sup> day of October, 2013.

Issued by: JENA RUSSELL  
REGISTRY OFFICER  
AGENT DU GREFFE

Address of  
Local office.

<b>180 Queen Street West</b>	<b>180, rue Queen Ouest</b>
<b>Suite 200</b>	<b>bureau 200</b>
<b>Toronto, Ontario</b>	<b>Toronto, Ontario</b>
<b>M5V 3L6</b>	<b>M5V 3L6</b>

TO: Department of Justice  
Ontario Regional Office  
The Exchange Tower  
130 King Street West  
Suite 3400, Box 36  
Toronto ON M5X 1K6

**ORIGINATING NOTICE OF APPLICATION  
PURSUANT TO S.18 AND 18.1 OF THE  
FEDERAL COURT ACT**

**TO THE RESPONDENTS:**

**YOU ARE HEREBY ADVISED** that the Applicants, Rocco Galati, and the Constitutional Rights Centre Inc., will be making an application to the Court, on a day and at a time and place to be set by the Court, for the purpose of obtaining, pursuant to s.18 and 18.1 of the *Federal Court Act*, R.S.C. 1985, c.F.-7 as amended, declaratory, prerogative and injunctive relief, from the decision, made October 3<sup>rd</sup>, 2013, to appoint and “swear in” (administering of oath) the Honourable Justice Marc Nadon, a Judge of the Federal Court of Appeal to the Supreme Court of Canada pursuant to the requirements of ss. 4(2) 6, 10 and 11 the *Supreme Court of Canada Act* and s. 41(d) and 42(d) of the *Constitution Act, 1982*.

The Applicants will be making application for **THE FOLLOWING RELIEF:**

1. A declaration that:
  - (a) a Judge of the Federal Court (of Appeal) cannot be nominated, confirmed, appointed, nor sworn in, pursuant to ss. 4(2), 6, 10, and 11 of the *Supreme Court Act* as one of the required three Quebec Justices of the Supreme Court of Canada;
  - (b) that s. 6 of the *Supreme Court Act*, when properly interpreted, in tow with s. 5 of the *Supreme Court Act*, allows only for the appointment from “among”;
    - (i) Court of Appeal and Superior Justices of Quebec; or
    - (ii) Advocates of Quebec with at least 10 years standing at the bar;With “from among” meaning sitting Justices currently on the Court, or advocates (for the past 10 years of more) just prior to nomination for appointment;

- (c) that the appointment of Federal Court (of Appeal) Judges, under s. 6 of the *Supreme Court Act* as “Quebec” Judges to the Supreme Court of Canada, constitutes a change to “the composition” of the Supreme Court of Canada and would require a constitutional amendment, according to constitutional formula as understood and set out in ss. 41(d) and 42(d) of the *Constitution Act, 1982*;
- (d) that the appointment of Federal Court (of Appeal) Judges, under s. 6 of the *Supreme Court Act*, as “Quebec” judges to the Supreme Court of Canada, undermines and breaches the “Federalism”, “Constitutionalism”, and “Rule of Law” pillars, and underlying constitutional imperatives, as enunciated, *inter alia*, by the Supreme Court of Canada in the *Quebec Secession Reference*;
- (e) that the appointment of Federal Court (of Appeal) Judges, under s. 6 of the *Supreme Court Act*, as “Quebec” judges to the Supreme Court of Canada, further breaches the Applicant’s rights to a fair and independent judiciary as guaranteed by the underlying requirements of the Constitutional imperatives of the Rule of Law, Constitutionalism, and Federalism, as well as s. 7 of the *Charter* as set out, *inter alia*, by the Supreme Court of Canada in the *Judges’ Reference*;
- (f) that the Attorney General of Canada (Minister of Justice) rather than commissioning a private legal opinion, from former Supreme Court of Canada Justice Ian Binnie, on whether a Federal Court (of Appeal) judge could be appointed as one of the three Quebec Judges, as required by s. 6 of the *Supreme Court Act*, was duty-bound to bring a reference on the issue to the Supreme Court of Canada pursuant to s. 53 of the *Supreme Court Act*.

2. A permanent and interim order, in (the nature of) *prohibition*, pursuant to ss. 2 and 18-18.1 of the *Federal Courts Act*, and ss. 24(1) and/or s. 52 of the *Constitution Act, 1982*, to prohibit the appointment, the issuance of letters patent under the Great Seal, pursuant to s. 4(2) of the *Supreme Court Act*, or the “swearing in”, administering of the oath by the Chief Justice, or in case of her illness, by any other Judge present in Ottawa, pursuant to ss. 10-11 of the *Supreme Court Act*, of the Honourable Justice Marc Nadon by the Respondents, and from any of their designates, to the Supreme Court of Canada.
3. That, should letters patent under the Great Seal be issued, and the oath already administered, that such letters patent under the Great Seal, by way of:
  - (a) Quo Warranto;
  - (b) declaratory relief; and
  - (c) an order (in the nature of) *certiorari*;  
be declared invalid and quashed, *nunc pro tunc* to the day prior to the nomination of the Honourable Justice Marc Nadon to fill the vacant Supreme Court of Canada spot as one of the three (3) Quebec Judges required under s. 6 of the *Supreme Court Act*.
4. Such further relief and other grounds as counsel may advise and this Honourable Court permit.

**THAT THIS APPLICATION IS BASED ON THE FOLLOWING GROUNDS:**

1. That:

- (a) a Judge of the Federal Court (of Appeal) cannot be nominated, confirmed, appointed, nor sworn in, pursuant to ss. 4(2), 6, 10, and 11 of the *Supreme Court Act* as one of the required three Quebec Justices of the Supreme Court of Canada under s.6;
- (b) s. 6 of the *Supreme Court Act*; when properly interpreted in tow, with s. 5 of the *Supreme Court Act*, allows only for the appointment from “among”;
  - (i) Court of Appeal and Superior Justices of Quebec; or
  - (ii) Advocates of Quebec with at least 10 years standing at the bar;With “from among” meaning sitting Justices currently on the Court, or advocates (for the past 10 years of more) just prior to nomination for appointment;
- (c) the appointment of Federal Court (of Appeal) Judges, under s. 6 of the *Supreme Court Act* as “Quebec” Judges to the Supreme Court of Canada, constitutes a change to “the composition” of the Supreme Court of Canada and would require a constitutional amendment, according to constitutional formula as understood and set out in ss. 41(d) and 42 (d) of the *Constitution Act, 1982*;
- (d) the appointment of Federal Court (of Appeal) Judges, under s. 6 of the *Supreme Court Act*, as “Quebec” judges to the Supreme Court of Canada, undermines and breaches the “Federalism”, “Constitutionalism”, and “Rule of Law” pillars, and underlying constitutional imperatives, as enunciated, *inter alia*, by the Supreme Court of Canada in the *Quebec Secession Reference*;

- (e) the appointment of Federal Court (of Appeal) Judges, under s. 6 of the *Supreme Court Act*, as “Quebec” judges to the Supreme Court of Canada, further breaches the Applicant’s rights to a fair and independent judiciary as guaranteed by the underlying requirements of the Constitutional imperatives of the Rule of Law, Constitutionalism, and Federalism, as well as s. 7 of the *Charter* as set out, *inter alia*, by the Supreme Court of Canada in the *Judges’ Reference*;
- (f) the Attorney General of Canada (Minister of Justice) rather than commissioning a private legal opinion, from former Supreme Court of Canada Justice Ian Binnie, on whether a Federal Court (of Appeal) judge could be appointed as one of the three Quebec Judges, as required by s. 6 of the *Supreme Court Act*, was duty-bound to bring a reference on the issue to the Supreme Court of Canada pursuant to s. 53 of the *Supreme Court Act*.

2. Such further relief and other grounds as counsel may advise and this Honourable Court permit.

**THE APPLICANT REQUESTS**, pursuant to *Rules* 317 and 318 of the *Federal Courts Rules*, that the Respondents send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the Tribunal (Minister of Justice/Attorney General of Canada) to the applicant and to the Registry:

- 1. any other legal opinion commissioned and/or received by the Minister of Justice/Attorney General of Canada, The Right Honourable Stephen Harper, and/or any of their designates on the same, or other questions covered by former Supreme Court of Canada Justice Ian Binnie’s opinion, and/or any opinion whatsoever with respect to the appointment of Federal Court (of Appeal) judge to the Supreme Court of Canada.; and

2. any and all opinions and/or commentary provided by Professor Hogg and/or former Supreme Court of Canada Justice Louise Charron, or anyone else whatsoever with respect to the matters referred to in 1. above.

**AND FURTHER TAKE NOTICE THAT** the Applicants intend to seek an interim order, pursuant to, *inter alia*, *Metropolitan Stores* and *RJR MacDonald*, to stay the appointment and swearing in of the Honourable Justice Marc Nadon, to the Supreme Court of Canada, to be made returnable within 2-3 weeks from the Issuance and Service of the within originating Notice of Application, pending the expedited determination of the singular issue contained in the within application.

The address in Canada where documents may be served on the Applicants is:


ROCCO GALATI LAW FIRM  
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SLANSKY LAW  
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The Applicants propose that this application be heard in Toronto.



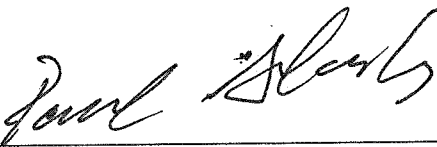
DATED at Toronto, this 7<sup>th</sup> day of October,

  
\_\_\_\_\_  
ROCCO GALATI, on his own behalf.

ROCCO GALATI LAW FIRM  
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\_\_\_\_\_  
PAUL SLANSKY, on behalf of the Constitutional Rights Centre Inc.

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**FEDERAL COURT**

**BETWEEN:**

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CONSTITUTIONAL RIGHTS CENTRE INC.,**

**Applicants**

- and -

**THE RIGHT HONOURABLE STEPHEN HARPER,  
HIS EXCELLENCY THE RIGHT HONOURABLE  
GOVERNOR GENERAL DAVID JOHNSTON,  
THE RIGHT HONOURABLE BEVERLEY  
MCLACHLIN, CHIEF JUSTICE OF CANADA,  
THE HONOURABLE JUSTICE MARC NADON,  
JUDGE OF THE FEDERAL COURT OF APPEAL,  
THE ATTORNEY GENERAL OF CANADA, THE  
MINISTER OF JUSTICE**

**Respondents**

I HEREBY CERTIFY that the above document is a true copy of the  
original issued out of / filed in the Court on the 7  
day of Oct A.D. 20 13  
Dated this 7 day of Oct 20 13  
[Signature]

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**ORIGINATING NOTICE OF APPLICATION  
PURSUANT TO S. 18 AND 18.1 OF THE  
FEDERAL COURT ACT**

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OCT - 7 2013  
TORONTO

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Solicitor on his own behalf

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Rights Centre Inc.