

Court File No.

CV-21-00 665-916-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

GREEN PARTY OF CANADA FUND INC.

and

GREEN PARTY OF CANADA

Applicants / Respondents at Arbitration

- and -

ANNAMIE PAUL

Respondent / Applicant at Arbitration

NOTICE OF APPLICATION

(Pursuant to Rules 14.05 and 38 of The Rules of Civil Procedure)

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing *(choose one of the following)*

- In person
- By telephone conference
- By video conference

at the following location:

180 Queen Street West, Suite 200, Toronto, ON M5V 3L6

(Courthouse address or telephone conference or video conference details, such as a dial-in number, access code, video link, etc. if applicable)

On _____, at 10:00 a.m. *(or on a day to be set by the registrar).*

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 an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date July 21, 2021 Issued by J. Welsch
Local Registrar

Address of court office: Superior Court of Justice
~~180 Queen Street West, Suite 200~~
~~Toronto, ON M5V 3L6~~

TO: **HURON CHAMBERS**
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Lawyers for the Respondent / Applicant at Arbitration

APPLICATION

1. The Applicants make application for:
 - (a) An Order pursuant to section 46 of the Ontario *Arbitration Act, 1991*, SO 1991, c. 17 (the "*Arbitration Act*"), setting aside the Arbitration Award of Interim Arbitrator Earl Cherniak, dated July 15, 2021 (the "First Award") and the Arbitration Award of Interim Arbitrator Earl Cherniak, dated July 19, 2021 (the "Second Award") in respect of the Green Party of Canada (the "Green Party" or the "Party");
 - (b) An Order pursuant to section 45(1) of the *Arbitration Act, 1991*, granting leave to appeal the First Award and the Second Award to address errors of law;
 - (c) An Order setting aside or amending the First Award and the Second Award to address errors of law as set out below;
 - (d) An Order staying any subsequent arbitration award against the Green Party that may arise out of Ms. Paul's Supplementary Request for Urgent Interim Measures, dated July 15, 2021, which was heard by Interim Arbitrator Earl Cherniak on Saturday, July 17, 2021;
 - (e) the costs of this proceeding, plus all applicable taxes; and
 - (f) Such further and other relief as to this Honourable Court may seem just.
2. The grounds for the application are:
 - (a) The Respondent is the leader of the Green Party;

- (b) The Respondent signed an employment agreement, dated December 16, 2020 (the "Employment Agreement"), with the Green Party Fund of Canada Inc. (the "Fund");
- (c) The Employment Agreement contains an arbitration clause that directs that "any dispute, controversy, or claim arising out of or relating to [the] Agreement" be referred by arbitration under the Arbitration Rules of the ADR Institute of Canada, Inc. (the "ADRIC Rules");
- (d) The Respondent filed a Notice of Request to Arbitrate, dated July 7, 2021, amended July 9, 2021 and a first Request for Urgent Interim Measures, dated July 2, 2021, against both of the Party and the Fund, pursuant to the arbitration clause in the Employment Agreement;
- (e) In her Notice of Request to Arbitrate, the Respondent sought a number of remedies, including an order to quash a non-confidence vote on her leadership scheduled to take place at a meeting of the Party's Federal Council on July 20, 2021;
- (f) The Respondent sought effectively the same remedies on an urgent interim basis in her first Request for Urgent Interim Measures;
- (g) An Interim Arbitrator (the "Arbitrator") was appointed by the ADR Institute of Canada ("ADRIC") on July 5, 2021 to arbitrate, on an interim basis, the Respondent's first Request for Urgent Interim Measures;
- (h) ADRIC Rule 3.7 provides that the interim arbitral process is available only to parties who are signatories to the arbitration agreement and their successors;

- (i) The Party is not a signatory to the Employment Agreement nor to the arbitration clause;

The First Award

- (j) The Arbitrator issued the First Award on July 15, 2021 in which the following orders were made:
 - (i) The non-confidence motion scheduled to be heard on July 20, 2021 or any other non-confidence motions shall not proceed before the earlier of the Green Party general meeting in August 2021 or the disposition of this arbitration by the arbitrator selected by the parties or the court;
 - (ii) The Green Party shall post on its website a notice that the non-confidence motions scheduled to be heard on July 20, 2021 or any non-confidence motion shall not be heard before the general meeting of the Green Party in August 2021;
- (k) In making the First Award, the Arbitrator made an error in jurisdiction and therefore in law. The First Award purports to restrain the Green Party, which is not a signatory to the Employment Agreement with Respondent and therefore not a party to its arbitration clause.
- (l) The Arbitrator acted contrary to section 46(1)3 and 5 of the *Arbitration Act*, and outside of his jurisdiction when he concluded, at paragraph 48:

While the Green Party is not a signatory to the Employment Agreement, it is very much a party to it as I interpret it at this stage, and in my view it is a party to the Leader Support

Agreement notwithstanding the lack of a signature. I am satisfied that Rule 3.7.19 is not a bar to interim relief claimed against the Green Party.

- (m) In so doing, the Arbitrator erred having regard to:
 - (i) The principles of privity of contract including as expressed in *Seidel v Telus Communications Inc.* 2011 SCC 15;
 - (ii) ADRIC Rule 1.3.1 which states “The Rules apply if the parties agree to the Rules”; and
 - (iii) ADRIC Rule 3.7.19, which expressly limits the jurisdiction of an Interim Arbitrator, and which states: “Rule 3.7 applies only to parties who are signatories to the arbitration agreement and their successors.”

- (n) The Arbitrator also erred in law in purporting to limit the activities, decisions and communications of members and the membership of the Green Party, an unincorporated association of its members, in its activities as a Registered Party under the *Canada Elections Act*, SC 2000, c. 9 (the “*Canada Elections Act*”) and, in doing so, made determinations on subject matter outside of Ontario law, contrary to both section 46(1)3 and 5 of the *Arbitration Act*. The regulation and governance of Registered Parties is a matter of federal jurisdiction. Such a finding is outside of the scope of Ontario law.

- (o) Furthermore the Arbitrator erred in law in finding that the Green Party is a “signatory” or has entered into a financial employment contract with Ms. Paul, contrary to section 426 of the *Canada Elections Act*. As an unincorporated association, the Party has no legal capacity to enter into a financial employment contract. Only

the Fund may incur expenses and therefore enter into an employment contract.

The Second Award

- (p) The Respondent delivered a second Request for Urgent Interim Relief on July 15, 2021;
- (q) In relation to this Request, the Arbitrator issued the Second Award on July 19, 2021 in which the following orders were made:
 - (i) An order suspending further actions on the membership review process in relation to Ms. Paul, until the earlier of:
 - (1) the adjudication of this arbitration on the merits, or
 - (2) the announcement of the results of elections to the Federal Council on 19 August 2021 and the taking of office of the new members of the Federal Council.
 - (ii) An order prohibiting the initiation of any new membership review process in relation to Ms. Paul, until the earlier of:
 - (1) the adjudication of this arbitration on the merits, or
 - (2) the announcement of the results of elections to the Federal Council on 19 August 2021 and the taking of office of the new members of the Federal Council
 - (iii) An order that the following statement be posted on the GPC website:

The membership review process in relation to Ms. Paul has been suspended. No further membership reviews will be entertained by the Federal Council at this time.

- (r) The arbitrator erred in jurisdiction and in law in making the Second Award. In the Second Award, the Arbitrator erred by asserting jurisdiction contrary to the ADRIC Rules as it relates to both of the Applicants, as set out above. In addition, the Arbitrator erred in categorizing the second interim hearing as a "continuation" of the previous one.
- (s) The First Award had been issued and his original appointment fulfilled. This was a second and distinct Request for Urgent Interim Measures by the Respondent, but it was not dealt with that way by the Arbitrator. As a result, the Applicants were not granted all the express procedural rights contained in the ADRIC Rules to which they were entitled.
- (t) The Arbitrator erred in making the Second Award by assuming that he had jurisdiction "[i]n view of the history set out below, the relationship between the Applicant and the Respondents and the subject matter of the two requests." These were improper considerations which imply a case management role and are inconsistent with his jurisdiction under the ADRIC Rules.
- (u) In the Second Award, the Arbitrator exceeded his jurisdiction by making a determination in respect of an entirely separate agreement, that is the agreement amongst members of the Green Party contained in the Members' Code.
- (v) After finding adherence to the Members' Code to be a condition of membership in the Green Party, the Arbitrator erred by (i) concluding that the Respondent's Membership should not be subject to the automatic review called for by the Members' Code; (ii) concluding that the Green Party "initiated" this review; and (iii)

ignoring evidence before him that it was the action of Ms. Paul that automatically triggered such a review.

- (w) The Arbitrator erred in law in finding that the Members' Code does not apply to Ms. Paul on the basis that it is "trumped by By-law 2.1.5.2 and the Employment Agreement, such that the Applicant can only be removed from office by "motion at general meeting, following a non-confidence vote ..." and not by a review of her membership under the Code."
- (x) Not only is Ms. Paul a member of the Party and subject to the same Code as all other members, but she was aware of the Code at the time she acted in a manner that triggered an automatic review. Furthermore, there was no evidence or factual basis upon which the Arbitrator could conclude that the automatic review would "remove her from office".
- (y) Such further and other grounds as the lawyers may advise.

3. The following documentary evidence will be used at the hearing of the application:

- (a) The Affidavit of Lisa Todish and the Exhibits thereto, to be sworn;
- (b) Such further and other evidence as counsel may advise and this Honourable Court may permit.

July 20, 2021

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Lawyers for the Applicants

GREEN PARTY OF CANADA FUND INC. et al.

(Applicants)

-and- ANNAMIE PAUL

(Respondent)

Court File No.: CV-21-00665-16-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

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CERTIFIED TO BE A TRUE COPY / COPIE AUTHENTIQUE CERTIFIEE ET
THE ORIGINATING PROCESS / CONFORME A L'ACTE INTRODUCIF
ISSUED HEREIN / D'INSTANCE DELIVRE CI-INCLUS
DATED: July 21 2021 / DATE:
Hicks Morley Hamilton / PER / PAR:
SOLICITOR FOR THE / AVOCAT POUR LE