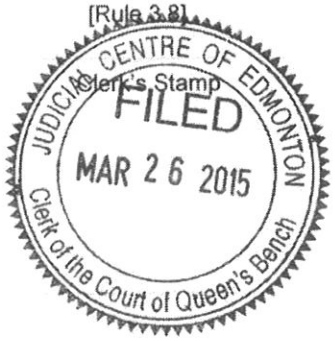
Form 7
[Rule 3.8]



COURT FILE NUMBER	1503-04488
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
APPLICANT	TOM ENGEL
RESPONDENT(S)	JAMES PRENTICE, P.C., Q.C. AS PRESIDENT OF EXECUTIVE COUNCIL OF THE PROVINCE OF ALBERTA
DOCUMENT	**ORIGINATING APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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Attention: Michael Bates

NOTICE TO THE RESPONDENT(S)

This application is made against you. You are a respondent.
You have the right to state your side of this matter before the Court.
To do so, you must be in Court when the application is heard as shown below:

Date: Monday, March 30, 2015
Time: 10:00 AM
Where: Court of Queen's Bench
Law Courts, 1A Sir Winston Churchill Square
Edmonton, AB

Before: The Presiding Justice in Chambers

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

Basis for this claim:

The parties

1. The Applicant, Tom Engel, is an Alberta business owner, taxpayer and qualified elector pursuant to the provisions of the *Election Act*, RSA 2000, c.E-1 **[*Election Act*]**.

2. The Applicant is also a Canadian citizen guaranteed the rights and freedoms of the *Canadian Charter of Rights and Freedoms,* Part I of the *Constitution Act, 1982,* being Schedule B to the *Canada Act, 1982 (U.K.),* 1982, c. 11 **[*Charter*]**.

3. The Respondent, James Prentice, P.C., Q.C., is the current elected Member of the Legislative Assembly **[MLA]** of Alberta holding the office of leader or President of Executive Council of the Province of Alberta **[Premier]**.

The basics of our democracy

4. Alberta is not a direct democracy.

5. Alberta is a form of representative and responsible government whereby MLAs are elected to represent citizens in conducting the day to day business and decision making of government by way of the Premier and his cabinet **[Executive Council]** advising the Lieutenant Governor in accordance with *The Alberta Act, 1905*, 4-5 Edw. VII, c. 3 (Can.) **[*Alberta Act*]**.

6. Should a government formed by the party whose MLAs hold the most seats in the Legislature introduce a policy change, no matter how drastic, Albertans are not entitled to recall MLAs; do not send in individual votes for or against the policy; and do not start over and re-elect all MLAs to affirm a mandate to govern.

7. The policy of government as reflected, for example, by a budget Bill, is approved or rejected by Albertans through the votes of the already elected MLAs. In introducing a drastic policy change, if the Premier loses the confidence of the Legislature, then his government must resign and permit a new Executive Council to attempt to govern or seek dissolution of the Legislature and a general election.

8. If the drastic policy change is passed by a majority of elected MLAs, then by definition, there remains a mandate to implement it.

9. Responsible government places the real power of Albertans in the hands of the elected Premier and other MLAs. The unelected Lieutenant Governor does not exercise any personal initiative or discretion in the exercise of the normal powers of

government. The personal discretionary powers of the Lieutenant Governor only apply in exceptional circumstances when the Premier no longer commands the confidence of a majority of MLAs in the Legislature or where the Premier and Executive Council advise the Lieutenant Governor to act in an unlawful or unconstitutional manner.

10. The lawful democratic mandate of Executive Council is not limited by change in public opinion unless and until such opinion is expressed by elected MLAs in an expression or vote of non-confidence.

11. As President of Executive Council the Respondent Premier has been lawfully and democratically elected as an MLA, and he leads a party holding a substantial majority of seats in the Legislature. The Respondent Premier undeniably has the confidence of the Legislature and thereby the mandate to govern according to the lawful and constitutional policies he and his cabinet deem fit in the public interest.

12. To suggest the Premier and Executive Council requires a mandate while clearly having a lawful and democratic one, is to suggest the seeking of a mandate of increased political advantage but not increased legal or moral authority.

13. More particularly, to suggest that doing the ordinary business of governing (what Albertans have already sent them to do on our behalf) by introducing a budget Bill could legitimately be the event which would require a new mandate from the electorate is untenable.

14. The Applicant seeks this Court's ruling that to spend public money to pursue a new mandate to govern while possessing full confidence of the Legislature, is a power that may no longer be exercised by the Respondent Premier, or any Premier, without first amending or repealing section 38.1 of the *Election Act*.

15. The Applicant further seeks an interim ruling to prevent a prospective breach of his and numerous other Albertans section 3 *Charter* rights.

16. In the alternative, the Respondent Premier has taken no step to depart from the previous office holder's promise and commitment to the electors and to the opposition parties of Alberta that there would be certainty and fairness in the timing of the next general election by limits placed on the powers of the office which prevent the giving advice to or making a request of the Lieutenant Governor other than that which would result in an election between March 1, 2016 and May 31, 2016.

17. As such, the Applicant seeks an order compelling the Respondent Premier to uphold the promise and legal obligation to hold the next general election during that timeframe.

18. The Respondent Premier has by his public words and conduct led the Applicant and the general public as a whole to believe that he does not consider his power to advise the Lieutenant Governor to dissolve the Alberta Legislature to be limited by section 38.1 of the *Election Act* or any promises.

19. The Premier has made public statements to the effect that the policy of the current Executive Council will be of such a significant change that it will be necessary for whoever is the Premier to have a mandate. The only reasonable interpretation of this statement is that he intends to call a snap election.

20. In all of the circumstances the within Application raises serious justiciable issues of great public importance. As an elector who pays close attention to politics, the Applicant has a real stake in the proceedings and is engaged with the issues that it raises. Further, this application is a reasonable and effective means to bring these matters to court as they are unlikely to be brought in a more effective manner.

Albertans are entitled to meaningfully participate in elections

21. Section 3 of the *Charter* provides that "[e]very citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein."

22. Section 38.1(2) of the *Election Act* mandates that the next general election for Alberta MLA's *shall* take place between March 1, 2016 and May 31, 2016, **[Fixed Election Period]** the last general election having been conducted on April 23, 2012:

> **General election dates**
>
> **38.1**(1) Nothing in this section affects the powers of the Lieutenant Governor, including the power to dissolve the Legislature, in Her Majesty's name, when the Lieutenant Governor sees fit.
>
> (2) Subject to subsection (1), a general election shall be held within the 3-month period beginning on March 1, 2012 and ending on May 31, 2012, and afterwards, general elections shall be held within the 3-month period beginning on March 1 and ending on May 31 in the 4th calendar year following polling day in the most recent general election.
>
> 2011 c19 s2

23. The "powers of the Lieutenant Governor" are not synonymous with the powers of the Lieutenant Governor in Council. The former are personal prerogatives of discretion while the latter are truly the powers of the Premier and cabinet. As the Lieutenant Governor in Council, the unelected office holder is obliged to follow advice received from the Premier and cabinet which is lawful and constitutional. The Legislature is deemed to have known this in specifically choosing the language of section 38.1(1).

24. The distinction of these powers has existed literally from the moment of the existence of the province. Section 10 of the *Alberta Act* states [emphasis added]:

> 10. All powers, authorities and functions which under any law were before the coming into force of this Act vested in or exercisable **by the Lieutenant Governor of the North-west Territories, with the advice, or with the advice and consent of the Executive Council thereof, or in conjunction with that Council or with any member or members thereof, or by the said Lieutenant Governor individually**, shall, so far as they are capable of being exercised after the coming into force of this Act in relation to the government of the said province, be vested in and shall or may be exercised **by the Lieutenant Governor of the said province, with the advice or with the advice and consent of, or in conjunction with, the Executive Council of the said province or any member or members thereof, or by the Lieutenant Governor individually, as the case requires, subject nevertheless to be abolished or altered by the Legislature of the said province.**

25. Eight years prior to the enactment of section 38.1, and as such, known to the Alberta Legislature and the Lieutenant Governor at the time of enactment, the Supreme Court of Canada held as follows [emphasis added]:[1]

> **52** ... there already is reason to be concerned that the most affluent parties will dominate the public discourse and deprive their opponents of a reasonable opportunity to speak and to be heard. Legislation that augments this disparity increases the likelihood that the already marginalized voices of political parties with a limited geographical base of support will be drowned out by mainstream parties with an increased ability to both raise and retain election funds.
>
> **53** This, in turn, diminishes the capacity of the individual members and supporters of such parties to play a meaningful role in the electoral process. As discussed above, **political parties act as a vehicle for the participation of individual citizens in the electoral process; they are the primary mechanism by which individual citizens introduce their own ideas and opinions into the public dialogue that elections spawn. Legislation that contributes to a disparity in the capacity of the various political parties to participate in that dialogue ensures that some persons have a more effective vehicle for their ideas and opinions than others**. The 50-candidate threshold thus infringes s. 3 of the *Charter* by decreasing the capacity of the members and supporters of the

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[1] ***Figueroa v Canada (Attorney General)***, 2003 SCC 37

disadvantaged parties to introduce ideas and opinions into the open dialogue and debate that the electoral process engenders.

54 The restriction on these benefits has a more general adverse effect as well. **The right to play a meaningful role in the electoral process includes the right of each citizen to exercise the right to vote in a manner that accurately reflects his or her preferences. In order to exercise the right to vote in this manner, citizens must be able to assess the relative strengths and weaknesses of each party's platform -- and in order to assess the relative strengths and weaknesses of each party, voters must have access to information about each candidate. As a consequence, legislation that exacerbates a pre-existing disparity in the capacity of the various political parties to communicate their positions to the general public is inconsistent with s. 3**. This, however, is precisely the effect of withholding from political parties that have not satisfied the 50-candidate threshold the right to issue tax receipts for donations received outside the election period and the right to retain unspent election funds. **By derogating from the capacity of marginal or regional parties to present their ideas and opinions to the general public, it undermines the right of each citizen to information that might influence the manner in which she or he exercises the right to vote.**

26. Section 38.1 of the *Election Act*, therefore, cannot be interpreted in a manner that contributes to disparity in the ability of Alberta's various political parties and their individual members' ability to meaningfully contribute their ideas and opinions to the public debate in a general election.

27. Alberta is presently in a notorious state of political flux and disadvantage for all political parties except for that which forms the current majority government. There has arguably never been a time when a general election on a date nearly a year earlier than mandated could cause more harm to every elector's rights to meaningful participation in the electoral process.

Correct interpretation of section 38.1

28. Beyond the plain language of the section, a review of Hansard transcripts confirms that the intention of the Legislature in enacting section 38.1 was to limit what was then described as the Premier's current ability to choose the date of the general election.

29. "Choosing" the date of the general election is done by way of section 39 of the *Election Act* which is decidedly exercising the power of the Premier and cabinet and **not** an exercise of the power of the Lieutenant Governor as he sees fit:

> **Authorization to issue writ of election**
> **39** Every election shall be commenced by the passing of an order of the Lieutenant Governor in Council
>
> (a) authorizing the issue of a writ of election in the prescribed form directed and addressed to the returning officer of each electoral division for which an election is to take place,
>
> (b) fixing the date of the writ,
>
> (i) which must be the same for all writs in the case of a general election, and
>
> (ii) which must be the same as the date of the order in the case of a by-election,
>
> (c) appointing the 10th day after the date of the writ as nomination day, or if the 10th day is a holiday, the next following day not being a holiday,
>
> (d) providing that, where voting is necessary, the 28th day after the date of the writ is the day on which voting is to take place, or if the 28th day is a holiday, the next following day not being a holiday, and
>
> (e) directing that the writ be returned as provided by this Act.

30. The Respondent may not lawfully pass an order fixing the date of a general election outside of the Fixed Election Period, subject only to the individual powers of the Lieutenant Governor to dissolve the Legislature following a loss of confidence in the Premier or to refuse to act if advised to do so in an unlawful or unconstitutional manner.

31. Professor Hogg has stated, "...any system of fixed election dates in a system of responsible government would have to allow for the possibility of an earlier election caused by the government losing confidence of a majority of the House before the fixed election date. But, provided this contingency is provided for by way of exception, fixed election dates are not inconsistent with the system of responsible government."

32. Any alternative interpretation which would still permit the Respondent Premier, or any successive Premier, to choose the date of a general election (outside of the Fixed Election Period) not only defeats the obvious intent of the Legislature but would violate section 3 of the *Charter*.

Albertans have a legitimate expectation that the Premier and Executive Council will honour their promises made to them about fixed elections.

33. The Applicant relies on the doctrines of Legitimate Expectation and Promissory Estoppel to prevent the Respondents from initiating an election outside of the Fixed Election Period.

Need for immediate interim relief

34. There is a real and substantial risk that the Applicant's section 3 *Charter* rights will be violated, as will the rights of numerous qualified electors as defined in the *Election Act* by the unlawful commencement of the next general election prior to the Fixed Election Period. Irreparable harm will be caused thereby and protection from a prospective *Charter* breach is warranted.

35. Moreover, the balance of convenience weighs heavily in favor of the Applicant who merely seeks the next Alberta general election to occur during the period it was set for back on April 23, 2012.

36. In addition, an estimated $28,000,000.00 will be spent that cannot be recovered at a time when the government is advising its citizens there are serious financial difficulties for all Albertans.

37. In 2012, the year of the last general election, appropriation was made of $23,200,000.00 for the Office of the Chief Electoral Officer **[CEO]**. The law came into effect March 21, 2012 and the election was April 23, 2012.

38. In 2013, with no general election, interim appropriation to the CEO was only $628,000.00. The law came into effect March 21, 2013.

39. In 2014, with no general election, interim appropriation to the CEO was $782,000.00. The law came into effect March 13, 2014.

40. For this year, with no general election supposed to legally occur until between March 1, 2016 and May 31, 2016, interim appropriation to the CEO – to ensure it has money it requires between now and the passage of the budget in approximately one month – was set at $28,000,000. The Bill passed 3rd reading March 23, 2015.

41. A general election campaign will be only 28 days. It is completely impractical for any judicial intervention to remedy either an unlawfully commenced election contrary to section 38.1(2) of the *Election Act*, or the section 3 *Charter* violations that are very likely to occur.

42. A general election commenced outside of the legally mandated timeframe prevents meaningful participation by Albertans in many ways, including but not limited to:

    (a) Limiting the opportunity to decide whether to stand as a candidate and to take all necessary steps to become a candidate to 10 days from the arbitrary surprise date of the writ chosen by the Premier. Individuals employed for more than 2 years required to terminate employment to become a candidate cannot do so and comply with Alberta's Employment Standards Code RSA 2000, c. E-9, section 58(1)(b);

    (b) Disenfranchising individuals who have become ordinarily resident in Alberta more than 6 months prior to March 1, 2016, but less than 6 months prior to the arbitrary surprise date of the writ chosen by the Premier;

    (c) Disenfranchising young persons who will attain the age of 18 years prior to March 1, 2016 but not prior to the arbitrary surprise date of the writ chosen by the Premier;

    (d) Disenfranchising individuals who will attain the honour and privilege of Canadian citizenship prior to March 1, 2016 but not prior to the arbitrary surprise date of the writ chosen by the Premier;

    (e) Disqualifying Albertans from seeking to become an MLA who may cease to be a Senator or Member of the House of Commons prior to March 1, 2016 but not prior to the arbitrary surprise date of the writ chosen by the Premier; and

    (f) Giving unfair advantage to all members of the governing party, including MLAs and individual party members and those of like mind in being able to contribute to and help to shape policy for the entire province by severely restricting the time within which one can organize and engage in the democratic process and by taking advantage of the unpreparedness of the other parties.

43. It is impossible for such infringements on the *Charter* rights of Albertans to be demonstrably justified in a free and democratic society, particularly where there exists no state of emergency and there exists a substantial majority government of duly elected MLAs with the confidence of the Legislature.

44. To the extent the Applicant himself does not have standing in respect of any of the above *Charter* violations, he seeks public interest standing be granted in accordance with ***Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society***, 2012 SCC 45.

Remedy sought:

45. An Order for abridgment of service of this Originating Application and supporting evidence as required to permit an urgent adjudication of its merits.

46. An Interim Order prohibiting the Respondent(s) from advising the Lieutenant Governor to dissolve the Legislature, to pass an order pursuant to section 39 of the *Election Act*, or to otherwise cause a general election prior to the earlier of:

    (a) the adjudication of the merits of this application or;
    (b) the Fixed Election Period of March 1, 2016 to May 31, 2016.

47. An Order declaring and confirming the powers of the Premier and the Ministry of Executive Council to have been limited by section 38.1(2) of the *Election Act* such that, while maintaining the confidence of the Legislature, no Premier or Ministry of Executive Council may advise the Lieutenant Governor of Alberta to dissolve the Legislature or may otherwise seek commencement of a general election outside the Fixed Election Period.

Affidavit or other evidence to be used in support of this application:

48. The Affidavit of the Applicant, Tom Engel, sworn March 26, 2015.

49. The Affidavit of Donald Rigney, sworn March 26, 2015.

50. Alberta Hansard transcripts and Legislative Assembly of Alberta records described herein.

Applicable Acts and regulations:

51. As described herein and the Alberta Rules of Court, Division 2 and Rule 13.5(1)

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this 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.