

Court File No. T- 78-08

FEDERAL COURT

IN:

FRIENDS OF THE EARTH – LES AMI(E)S DE LA TERRE

Applicant

- and -

THE GOVERNOR IN COUNCIL

Respondent

APPLICATION PURSUANT TO sections 18 and 18.1 of the *Federal Court Act*.

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following pages.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The Applicant requests that this application be heard at Ottawa, 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* and serve it on the Applicant's solicitor, or where the Applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Court Rules*, 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.

Garnet Morgan
Senior Registry Officer

January 17, 2008

Issued by:

Registry Officer

Address of
local office:

Federal Court of Canada
Registry Office
180 Queen Street West
Suite 200
Toronto, ON M5V 3L6

ph.: (416) 973-3356
fax: (416) 954-5068

TO: THE GOVERNOR IN COUNCIL

c/o THE ATTORNEY GENERAL OF CANADA
East Memorial Building
284 Wellington Street
Ottawa, ON K1A 0H8

APPLICATION

This is an application for judicial review of the failure of the Governor in Council to make, amend or repeal the necessary regulations under the *Kyoto Protocol Implementation Act* ("KPIA") or any other Act in compliance with the mandatory requirements set out in the KPIA.

The Applicant makes application for:

1. A declaration that the Governor in Council has not complied with s. 7 of the KPIA because the Governor in Council has failed, within 180 days of the Act coming into force, to "ensure that Canada fully meets its obligations under Article 3, paragraph 1, of the Kyoto Protocol by making, amending or repealing the necessary regulations under this or any other Act";
2. An order in the nature of mandamus requiring the Governor in Council to comply with s. 7 of the KPIA and make, amend or repeal the necessary regulations to "ensure that Canada fully meets its obligations under Article 3, paragraph 1, of the Kyoto Protocol by making, amending or repealing the necessary regulations under this or any other Act";
3. such further and other relief as this Honourable Court deems just.

The grounds for the application are:

1. On June 22, 2007, the KPIA received Royal Assent and became binding law in Canada. The purpose of the KPIA is "to ensure that Canada takes effective and timely action to meet its obligations under the Kyoto Protocol and help address the problem of global climate change."
2. Section 7 of the KPIA requires that within 180 days of the Act coming into force, the Governor in Council "shall ensure that Canada fully meets its

obligations under Article 3, paragraph 1, of the Kyoto Protocol by making, amending or repealing the necessary regulations under this or any other Act."

3. The 180-day deadline for making, amending or repealing regulations in compliance with Section 7 of the KPIA was 19 December 2007.

4. To date, the Governor in Council has failed to make, amend or repeal the necessary regulations under the KPIA or any other Act in compliance with the mandatory requirements set out in the KPIA.

5. The Governor in Council has failed to comply with a mandatory duty and to exercise its jurisdiction; erred in law; and acted contrary to law within the meaning of sections 18 and 18.1 of the *Federal Courts Act*.

Kyoto Protocol Implementation Act

6. Section 7 of the KPIA states:

7. (1) Within 180 days after this Act comes into force, the Governor in Council shall ensure that Canada fully meets its obligations under Article 3, paragraph 1, of the Kyoto Protocol by making, amending or repealing the necessary regulations under this or any other Act.

(2) At all times after the period referred to in subsection (1), the Governor in Council shall ensure that Canada fully meets its obligations under Article 3, paragraph 1, of the Kyoto Protocol by making, amending or repealing the necessary regulations under this or any other Act.

(3) In ensuring that Canada fully meets its obligations under Article 3, paragraph 1, of the Kyoto Protocol, pursuant to subsections (1) and (2), the Governor in Council may take into account any reductions in greenhouse gas emissions that are reasonably expected to result from the implementation of other governmental measures, including spending and federal-provincial agreements.

Nature of the Applicant

7. The Applicant is a national non-profit environmental group with a strong international umbrella organization. The Applicant has been very involved in the climate change debate. In addition, the Applicant presented its own recommended climate change action plan that would be Kyoto Protocol compliant, and was very engaged in the adoption and implementation of the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, a similar process and related protocol.

Statutory Provisions, Rules and Principles

8. *Kyoto Protocol Implementation Act*, ss. 2, 3, 4, 6, and 7;
9. *United Nations Framework Convention on Climate Change* (1992), 31 I.L.M. 848;
10. *Kyoto Protocol to the United Nations Framework Convention on Climate Change* (1998), 37 I.L.M. 22;
11. *Vienna Convention on the Law of Treaties* (1969), 8 I.L.M. 679, Article 26;
12. The precautionary, intergenerational equity and public trust principles;
13. *Federal Court Act*, ss. 18 and 18.1;
14. *Federal Court Rules, 1998*, and in particular r. 64; and
15. Such further grounds as counsel may advise and this Court may accept.


This application will be supported by the following material:

1. The affidavit of Beatrice Olivastri, Chief Executive Officer of Friends of the Earth, to be sworn;
2. The affidavit of Lynda Collins, to be sworn;
3. The record of the Governor in Council's decision not to make, amend or repeal the necessary regulations to comply with the provisions of the KPIA;
4. Such further and other affidavits and material as counsel may advise and this Honourable Court permit.

The applicant requests that the Governor in Council send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Governor in Council to the Applicant and to the Registry:

- The record of all documents and other materials considered by the Governor in Council in deciding not to make, amend or repeal the necessary regulations to comply with the provisions of the KPIA;

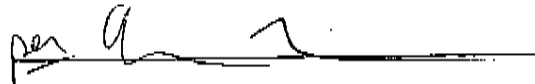
January 17, 2008



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Court File No.

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Solicitors for the Applicant

I HEREBY CERTIFY that the above document is a true copy of
the original issued out of / filed in the Court on the _____

day of JAN 17 2008 A.D. 2008

Dated this _____ day of JAN 17 2008 2008