

Court File No.: _____

New Brunswick Court of Queen's Bench

BETWEEN:

DEMOCRACY WATCH

Applicant

- and -

**PREMIER OF NEW BRUNSWICK,
and THE ATTORNEY GENERAL OF NEW BRUNSWICK REPRESENTING HER
MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK
and LIEUTENANT GOVERNOR OF NEW BRUNSWICK**

Respondents

**AFFIDAVIT OF DUFF CONACHER
(Sworn November 12, 2020)**

**I, *Duff Conacher*, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:**

1. I am the Coordinator for the Applicant, Democracy Watch, and have been since 1993 and, as such, I have personal knowledge of the matters deposed to herein. Where my knowledge is based on information and belief, I have so stated the basis of such information and belief.

2. Democracy Watch is a not-for-profit organization founded and federally incorporated in 1993 that advocates for democratic reform, citizen participation in public affairs, government and corporate accountability, and ethical behaviour in government and business in Canada. Democracy Watch is governed by its Coordinator (myself), Directors, and Advisory Committee. Attached hereto and marked as **Exhibit "A"** is a true copy of Democracy Watch's 1993 incorporation document by letters patent.

3. Democracy Watch advocates on behalf of numerous organizations and represents the interests of a large number of Canadians. As coalition leader, Democracy Watch has organized and coordinated five, nation-wide coalitions of citizen organizations. All of these coalitions support the related campaigns of Democracy Watch. In total, the coalitions involve more than 140 citizen organizations, whose collective membership totals more than three million Canadians. Democracy Watch itself has more than 43,000 supporters from across Canada who are members of its Democracy Watcher Network, including more than 250 in New Brunswick, and has had more than 225,000 Canadians sign its online petitions for changes to federal and provincial laws.

4. Democracy Watch articulates its mandate as "20 Steps towards a modern, working democracy", including changes to the information governments and businesses provide to citizens; changes in the ways citizens participate in government and business decision-making; and changes to the ways in which citizens can hold governments and businesses accountable for their decisions and activities. Attached hereto and marked as **Exhibit "B"** is a true copy of "20 Steps toward a Modern, Working Democracy" as it appears on the website of Democracy Watch.

5. In pursuit of this mandate, Democracy Watch actively participates in public policy-making and legislative processes in matters relating to democratic reform and government accountability. In particular, Democracy Watch has made

submissions and appeared before parliamentary committees in legislative proceedings leading to the enactment or amendment of measures including:

- a. Amendments to the *Canada Elections Act* (S.C. 2000, c. 9) in 2000, 2003, 2006, 2014 and 2018.
- b. Amendments to British Columbia's *Lobbyists' Registration Act* [SBC 2001] c. 42 in 2017 and 2018.
- c. Amendments to British Columbia's *Election Act* [RSBC 1996] c. 106 in 2017.
- d. Enactment of British Columbia's *Local Elections Campaign Financing Amendment Act* [SBC 2014] c. 18 in 2017.
- e. Amendments to Alberta's *Election Finances and Contributions Disclosure Act* [RSA 2000] c. E-2 in 2016 and 2017.
- f. Amendments to Ontario's *Election Finances Act*, R.S.O. 1990, c. E.7 in 2016.
- g. Amendments to Ontario's *Lobbyists Registration Act*, 1998, S.O. 1998, c. 27 in 2015;
- h. Amendments to the federal *Lobbying Act*, RSC 1985, c.44 (4th Supp.), its predecessor the *Lobbyist Registration Act*, and the *Lobbyists Registration Regulations*, SOR/2008-116 (1994, 1997, 2000, 2003, 2006, and 2010), including amendments changing the federal government Registrar of Lobbyists into the more independent Office of Parliament position of Commissioner of Lobbying;
- i. Amendments to the federal *Conflict of Interest and Post-Employment Code for Public Office Holders* (establishing the position of Ethics Counsellor in 1994, and amendments in 2000, 2003, 2004 and 2006);
- j. Amendments to the *Parliament of Canada Act*, RSC 1985, c.P-1 to change the Ethics Counsellor into the more independent Officer of Parliament position of federal Ethics Commissioner, and subsequent changes to the enforcement powers and change of the title of this position to Conflict of Interest and Ethics Commissioner through (2002 to 2007);
- k. Enactment of the federal *Conflict of Interest Act*, SC 2006, c.9, s.2;
- l. Enactment and amendment of the federal *Conflict of Interest Code for Members of the House of Commons* in (2004, and amendments in 2009);

- m. Enactment and amendment of the federal *Lobbyists' Code of Conduct* (1997 and 2015 versions).
6. Democracy Watch further pursues its mandate of advancing accountability in democratic governance by initiating petitions and participating in proceedings of the various bodies created by these legislative regimes. In particular, Democracy Watch has filed more than 75 government ethics-related petitions with the federal Commissioner of Lobbying, the federal Ethics Commissioner, and their predecessors, and also with provincial ethics commissioners in British Columbia and Ontario.
7. Democracy Watch has also pursued the advancement of accountability in democratic governance before the courts. Democracy Watch appeared as an intervener before the Supreme Court of Canada, in *Harper v. Canada (Attorney General)*, [2004] 1 SCR 827, 2004 SCC 33, and has filed proceedings concerning the independence and rulings of the federal Ethics Commissioner, the federal Commissioner of Lobbying, and their predecessors, and the British Columbia Conflict of Interest Commissioner, and Ontario's Integrity Commissioner, and the Prime Minister's snap federal election call in 2008, most recently, concerning the snap election call by the Premier of British Columbia, as follows:
- a. *Democracy Watch v. Attorney General of Canada (Office of the Ethics Counsellor)*, 2004 FC 969, [2004] 4 FCR 83;
 - b. *Democracy Watch v. Barry Campbell and the Attorney General of Canada (Office of the Registrar of Lobbyists)*, 2009 FCA 79, [2010] 2 FCR 139;
 - c. *Conacher v. Canada (Prime Minister)*, 2009 FC 920, affirmed by *Conacher v. Canada (Prime Minister)*, 2010 FCA 131;
 - d. *Democracy Watch v. British Columbia (Conflict of Interest Commissioner)*, 2017 BCSC 123;
 - e. *Democracy Watch v. Canada (Attorney General)*, 2018 FC 1290;
 - f. *Democracy Watch v. Canada (Attorney General)*, 2018 FC 1291;

- g. *Democracy Watch v. Canada (Attorney General)*, 2018 FCA 194;
- h. *Democracy Watch v. Canada (Attorney General)*, 2018 FCA 195;
- i. *Democracy Watch v. Canada (Attorney General)*, 2019 FC 388;
- j. *Democracy Watch v. Canada (Attorney General)*, 2020 FCA 28;
- k. *Canada (Attorney General) v. Democracy Watch*, 2020 FCA 69, and;
- l. *Democracy Watch and Wayne Crookes v. British Columbia (Premier and Lieutenant Governor)*, (ongoing, B.C. Supreme Court File No. S2010710).

8. Democracy Watch was granted standing by the courts in rulings on cases (a) to (d) listed above, and was granted public interest standing in rulings on cases (e) to (k) listed above.
9. I am aware that provincial legislation in New Brunswick has established fixed election dates every four years and I understand that, according to the law, the date for the next provincial election in New Brunswick is set for October 2022.
10. I learned through media reports on or about August 17, 2020 that Blaine Higgs, the Premier of New Brunswick, and his Cabinet had caused an early election to be held and that the ordinary voting day would be September 14, 2020.
11. Attached to my affidavit and marked as **Exhibit "C"** is a copy of the Lieutenant-Governor in Council's Order in Council of August 17, 2020 directing the issuing of writs and fixing various dates for a general election including the ordinary polling day of September 14, 2020, and a copy of the Lieutenant Governor's Proclamation of August 17, 2020 dissolving the Legislative Assembly.
12. In my opinion, as someone who has dedicated my professional life to advocating for fairness in governance, the New Brunswick provincial election was called for

partisan reasons. I believe that the Premier and his Cabinet believed that their Progressive Conservative party was in good public favour, particularly in light of the provincial government's handling of the COVID-19 pandemic. I believe the Premier and his Cabinet are concerned that by the fixed election date in 2022, the public may be unhappy with continuing restrictions due to COVID-19 and a potential economic downturn, and so the Premier and his Cabinet took political advantage by calling an election now.

13. I am frustrated and disappointed that the Premier and his Cabinet disregarded the fixed election date laws that were duly passed by the legislature. In my view, this action undermines the rule of law, and it diminishes my faith in the democratic process.

14. I make this affidavit in support of the Applicant's application for judicial review of the Premier and Cabinet's decisions to advise the Lieutenant Governor to dissolve the legislature and call a snap election, and the Lieutenant Governor and Lieutenant-Governor in Council's actions of dissolving the legislature and setting the dates for the snap election, and for no other or improper purpose.

Sworn before me)
this 12 day of November 2020)
in the City of Toronto)
in the Province of Ontario.)



Yasmin Shaker
Commissioner for taking affidavits
Law Society of Ontario Member #47355C



Duff Conacher

THIS IS EXHIBIT


“A”

—

TO THE AFFIDAVIT OF

DUFF CONACHER

SWORN NOVEMBER 12, 2020



Yasmin Shaker

Commissioner for taking affidavits
Law Society of Ontario Member #47355C



Industry and Science
Canada

Industrie et Sciences
Canada

Canada
Corporations Act

Loi sur les
corporations canadiennes

C A N A D A

LETTERS PATENT

WHEREAS an application has been filed to incorporate a corporation under the name

DEMOCRACY WATCH/DÉMOCRATIE EN SURVEILLANCE

THEREFORE the Minister of Industry, Science and Technology by virtue of the powers vested in him by the Canada Corporations Act, constitutes the applicants and such persons as may hereafter become members in the corporation hereby created, a body corporate and politic in accordance with the provisions of the said Act. A copy of the said application is attached hereto and forms part hereof.

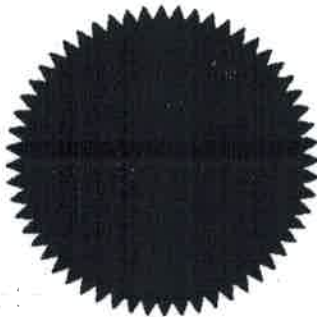
Date of Letters Patent - September 17, 1993

GIVEN under the seal of office of the Minister of Industry, Science and Technology

for the Minister of Industry,
Science and Technology

RECORDED 3rd November, 1993

Film 688 Document 165

Deputy Registrar General of Canada

Canada

THIS IS EXHIBIT

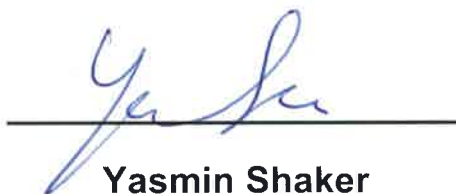
“B”

—

TO THE AFFIDAVIT OF

DUFF CONACHER

SWORN NOVEMBER 12, 2020



Yasmin Shaker

Commissioner for taking affidavits
Law Society of Ontario Member #47355C



Cleaning up and making governments and corporations more accountable to you, and making Canada the world's leading democracy

DONATE TO DEMOCRACY



Mandate

20 Steps towards a Modern, Working Democracy

Democracy Watch's mandate, *20 Steps towards a Modern, Working Democracy* (set out below) proposes changes that all governments in Canada should enact (according to their respective powers) to ensure that Canadian citizens have a greater and more meaningful role in government and corporate decision-making in Canada.

Democracy Watch's "20 Steps" mandate is based upon Democracy Watch's [Definition of a Democratic Society](#).

You will see that most of the 20 steps below are "links". By clicking on any of the "linked" steps you will be taken to the webpage for the Democracy Watch campaign that addresses that step. If you want to see details about all of Democracy Watch's campaigns, go to the [Campaigns](#) page.

Please note that due to lack of resources, and Democracy Watch's decision to focus on democratic reform issues that other groups are not already addressing, Democracy Watch does not work directly on the following issue areas that are key issues for a democratic society:

- protection of fundamental human rights (Please contact the

43055

Network

Members

Join the
DemocracyWatcher
Network

First Name

Consent

I give
Democracy Watch
permission to
collect and use my
data submitted in
this form.

Please give consent so we can send you our newsletter and action alerts! Of course we will never give your details to third parties as defined in [our privacy policy](#).

following government agencies and non-governmental organizations concerning this issue: [Canadian Human Rights Commission](#) and provincial human rights commissions, [Amnesty International](#), [Canadian Civil Liberties Association](#), [B.C. Civil Liberties Association](#), [Canada Without Poverty](#));

- protection of rights of workers (Please contact the following organization concerning this issue: [Canadian Labour Congress](#)), and;
- while Democracy Watch works on issues concerning the process of government budgeting and spending and waste prevention, it does not work specifically on the content of government budgets, nor on social equity issues generally (Please contact the following non-governmental organizations concerning the content of government budgets, and social equity issues: [Canada Without Poverty](#), [Canadian Centre for Policy Alternatives](#), [Canadian Labour Congress](#) and [Canadian Taxpayers Federation](#)).

Steps to empower Canadians as voters:

1. [Reform the electoral system to provide a more accurate representation in Parliament of the popular vote and regional interests.](#)
2. [Create mechanisms for citizens to hold their elected representatives accountable.](#)
3. [Reform the political party and election financing system to extend the principle of one person, one vote to spending during election campaigns.](#)
4. [Reform government policy development, legislative and administrative decision-making processes and create meaningful mechanisms for citizen participation.](#)
5. [Restrict and require full disclosure of the activities of lobbyists.](#)

Steps to empower Canadians as citizens:

Last Name

Email Address

Postal Code

Join Now

NEWS

Illegal snap election produces (sort of) new B.C. false majority government – will it finally be democratic?

October 26, 2020 12:56 pm

Democracy Watch and Wayne Crookes, founder of IntegrityBC, file lawsuit against B.C. Premier's election call

October 23, 2020 3:10 pm

Democracy Watch filing lawsuit against B.C. Premier's election call

October 19, 2020 12:22 pm

READ ALL NEWS

6. Develop an active, practical civics curriculum that teaches Canadians the knowledge and skills needed to participate effectively in the political and legal system.
7. Increase access to justice for Canadians challenging corporate waste, fraud, abuse and misrepresentation.
8. Increase accountability of the judiciary to the public.
9. Amend the Charter of Rights and Freedoms to explicitly exclude corporations from its protection, thereby reclaiming it as a Charter of Human Rights and Freedoms.

Steps to empower Canadians as taxpayers:

10. Establish a simple checkoff on tax returns that invites taxpayers to become fee-paying members of their own national taxpayers association, which will audit government efficiency, spending and purchasing and will advocate for their interests.
11. Decrease the economic gap between elected officials and Canadians and increase ethical standards in government. (in addition to the Government Ethics Campaign, **see also** the Honesty in Politics Campaign)
12. Link public ownership of public assets with public control of these assets and set aside portions of the revenues collected from the private use of public assets (e.g. Crown land) to fund a citizen watchdog group that will monitor the use of these assets. (**See #15** below for related campaign)
13. Recognize public ownership of the public airwaves and give Canadians direct access to TV and radio broadcasting. (**See #15** below for related campaign)

Steps to empower Canadians as consumers of information and services:

14. Enable Canadians to obtain from the government, in an accessible form, timely and accurate information for which they have paid as taxpayers but are now unable to obtain.

15. Require financial institutions, insurance companies, TV cable companies, telephone, natural gas, hydro-electricity, water and sewage utilities, and other government institutions and businesses to include periodic inserts in their billing envelopes or other mailings that invite consumers to become fee-paying members of their own consumer associations which will act as watchdogs to negotiate and advocate for their interests.

Steps to empower Canadians as shareholders of private and public wealth:

16. Recognize worker ownership of pension funds and give workers greater control over pension assets (NOTE: Please contact the Canadian Labour Congress for information about this issue)

17. Recognize shareholder ownership of public corporations and create shareholder democracy by giving shareholders greater control over corporate decision-making.

18. Recognize that there are other “shareholders” of a corporation – for example, its employees, and members of the community in which it operates – and create mechanisms for these shareholders to participate in corporate decision-making and hold corporations accountable for their activities.

19. Require financial institutions, on a branch-by-branch basis, to disclose their amount of reinvestment into the surrounding community, and set minimum rates of reinvestment.

20. Encourage the creation of local currency systems to support community economic development and community service. (For example, the [Time Bank system](#))

[Privacy Policy](#)

[Contact Us](#)



Site built by [Spakemedia](#)

© Democracywatch.ca - 2004-2020

THIS IS EXHIBIT

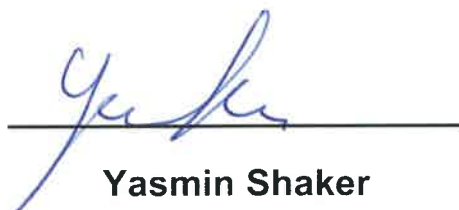
“C”

—

TO THE AFFIDAVIT OF

DUFF CONACHER

SWORN NOVEMBER 12, 2020

A handwritten signature in blue ink, appearing to read 'Yasmin Shaker', is written over a horizontal line.

Yasmin Shaker

Commissioner for taking affidavits
Law Society of Ontario Member #47355C

AUGUST 17, 2020

2020-187

THE HONOURABLE BLAINE HIGGS, THE PREMIER, RECOMMENDS TO THE EXECUTIVE COUNCIL:

THAT the Legislative Assembly be dissolved; that writs of election for each electoral district of the Province be issued on the 17th day of August, 2020, and be returnable on the 25th day of September, 2020; that the 28th day of August, 2020 at 2:00 p.m. be appointed as the day for nomination of candidates; that the 5th and 8th days of September, 2020 be appointed as advanced polling days; that the 18th day of September, 2020 be appointed as the day candidates are declared elected; and that the 14th day of September, 2020, be appointed polling day; and that a meeting of the Legislative Assembly be held at Fredericton on the 27th day of October, 2020.

AND the Executive Council concurring in said Recommendation.

IT IS ACCORDINGLY SO ORDERED.



Brenda L. Murphy
Lieutenant-Governor

This is to certify that the foregoing is a true copy of an Order of the Lieutenant-Governor in Council of the Province of New Brunswick, made on the 17 August 2020.
Je certifie que le document qui précède est une copie conforme d'un décret du lieutenant-gouverneur en conseil de la province du Nouveau-Brunswick, pris le 17 août 2020.

Province of New Brunswick, made on the
de la province du Nouveau-Brunswick, pris le

17 August 2020.

Clerk of the Executive Council/Greffier du Conseil exécutif



BY HER HONOUR, BRENDA L. MURPHY
LIEUTENANT-GOVERNOR OF NEW BRUNSWICK

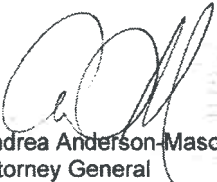
PROCLAMATION

WHEREAS I have thought fit to dissolve the Legislative Assembly of this Province, the same is hereby dissolved accordingly, effective August 17, 2020.

AND I have thought fit further to order and direct that Writs of Election for each Electoral District of the Province be issued on the 17th day of August, 2020, and be returnable on the 25th day of September, 2020; that the 28th day of August, 2020 at 2:00 p.m. be appointed as the day for nomination of candidates; that the 5th and 8th days of September, 2020 be appointed as advanced polling days; that the 18th day of September, 2020 be appointed as the day candidates are declared elected; and that the 14th day of September, 2020, be appointed polling day; and that a meeting of the Legislative Assembly be held at Fredericton on the 27th day of October, 2020.

Given under my hand and the
Great Seal of the Province at
Fredericton on the 17th day of
August, in the year of our Lord
Two Thousand and Twenty and in
the sixty-ninth year of Her
Majesty's reign.

BY COMMAND OF THE LIEUTENANT-GOVERNOR


Andrea Anderson-Mason, Q.C.
Attorney General


Brenda L. Murphy
Lieutenant-Governor

LE 17 AOÛT 2020

2020-187

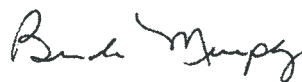
L'HONORABLE BLAINE HIGGS, PREMIER MINISTRE, RECOMMANDE AU
CONSEIL EXÉCUTIF :

Que l'Assemblée législative soit dissoute; que des brefs d'élection pour toutes les circonscriptions électorales de la province soient émis le 17 août 2020, les dits brefs d'élection devant être retournés le 25 septembre 2020, que le 28 août 2020, à 14 h, soit désigné jour de la déclaration des candidatures, que les 5 et 8 septembre 2020 soient désignés jours du scrutin par anticipation, que le 18 septembre 2020 soit désigné jour où les candidats sont déclarés élus et que le 14 septembre 2020 soit désigné jour du scrutin; et que l'Assemblée législative se réunisse à Fredericton le 27 octobre 2020.

Le Conseil exécutif ayant souscrit aux susdites recommandations,

IL EST DONC ORDONNÉ DE S'Y CONFORMER.

La lieutenant-gouverneure,



Brenda L. Murphy

This is to certify that the foregoing is a true copy of an Order of the Lieutenant-Governor in Council of the
Je certifie que le document qui précède est une copie conforme d'un décret du lieutenant-gouverneur en conseil

Province of New Brunswick, made on the
de la province du Nouveau-Brunswick, pris le

17 août 2020.

Clerk of the Executive Council/Greffier du Conseil exécutif



PAR SON HONNEUR BRENDA L. MURPHY,
LA LIEUTENANTE-GOUVERNEURE DU
NOUVEAU-BRUNSWICK

PROCLAMATION

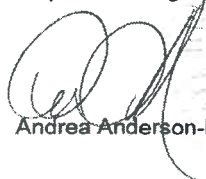
ATTENDU que j'ai jugé à propos de dissoudre l'Assemblée législative de la province, ladite assemblée est ainsi dissoute par les présentes, à compter du 17 août 2020.

J'ai en outre jugé à propos d'ordonner que des brefs d'élection pour toutes les circonscriptions électorales de la Province soient émis le 17 août 2020, les dits brefs d'élection devant être retournés le 25 septembre 2020, que le 28 août 2020, à 14 h, soit désigné jour de la déclaration des candidatures, que les 5 et 8 septembre 2020 soient désignés jours du scrutin par anticipation, que le 18 septembre 2020 soit désigné jour où les candidats sont déclarés élus et que le 14 septembre 2020 soit désigné jour du scrutin; et que l'Assemblée législative se réunisse à Fredericton le 27 octobre 2020.

La présente proclamation est faite
sous mon seing et sous le grand
sceau de la province à
Fredericton, le 17 août, en l'an de
grâce deux mille vingt et en la
soixante-neuvième année du
règne de Sa Majesté.


PAR ORDRE DU LIEUTENANTE-GOUVERNEURE

La procureure générale,



Andrea Anderson-Mason, c.r.

La lieutenant-gouverneure,



Brenda L. Murphy