

**FEDERAL COURT OF CANADA**

BETWEEN:

**DEMOCRACY WATCH and DUFF CONACHER**

Applicants

- and -

**ATTORNEY GENERAL OF CANADA**

Respondent

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**AFFIDAVIT OF DUFF CONACHER  
(Sworn Thursday, December 17, 2020)**

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

1. I was a Part-time professor at the University of Toronto Faculty of Law from 2011–14, and a Visiting Professor at the University of Ottawa from 2014–16, and a cross-appointed Part-time Professor at the University of Ottawa from 2016–19 at the Faculty of Law and the School of Political Studies. Through that time period, I taught courses based on my research including a course at the University of Toronto Faculty of Law entitled *Law of Good Governance and Ethics in Government and Business* (LAW292H1F), a course at the University of Ottawa’s School of Political Studies entitled *Law, Politics and the Constitution in Canada* (POL4134), and a course at the University of Ottawa’s Faculty of Law

entitled *Law of Good Government* (CML1105F). All courses include a section 2 on the statutes and case law concerning judicial independence. I am also a Ph.D. student at the University of Ottawa's Faculty of Law, and a Vanier Canada Scholar.

2. I am the Coordinator of Democracy Watch. In this role, I have monitored developments concerning Cabinet appointments, conflicts of interest and judicial independence in Canada for several years. I have also made several written submissions concerning Cabinet appointment processes, conflicts of interest issues, and the independence of law enforcement in Canada to House of Commons committees, and Senate committees, and legislative committees in various provinces.
3. 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.

### **Democracy Watch**

1. 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 copy of Democracy Watch's 1993 incorporation document by letters patent.
2. 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 and has had more than 225,000 Canadians sign its online petitions for changes to federal and provincial laws. 3

3. 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 printout of “20 Steps toward a Modern, Working Democracy” from the website of Democracy Watch.
4. 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. Changes to Canada’s judicial appointments system in 2007 and 2016.
  - b. Amendments to the *Canada Elections Act* (S.C. 2000, c. 9) in 2000, 2003, 2006, 2014 and 2018.
  - c. Amendments to British Columbia’s *Lobbyists’ Registration Act* [SBC 2001] c. 42 in 2017 and 2018.
  - d. Amendments to British Columbia’s *Election Act* [RSBC 1996] c. 106 in 2017.
  - e. Enactment of British Columbia’s *Local Elections Campaign Financing Amendment Act* [SBC 2014] c. 18 in 2017.
  - f. Amendments to Alberta’s *Election Finances and Contributions Disclosure Act* [RSA 2000] c. E-2 in 2016 and 2017.

- g. Amendments to Ontario's *Election Finances Act*, R.S.O. 1990, c. E.7 in 2016.
  - h. Amendments to Ontario's *Lobbyists Registration Act*, 1998, S.O. 1998, c. 27 in 2015;
  - i. Amendments to the federal *Lobbying Act*, RSC 1985, c.44 (4<sup>th</sup> 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;
  - j. 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);
  - k. 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);
  - l. Enactment of the federal *Conflict of Interest Act*, SC 2006, c.9, s.2;
  - m. Enactment and amendment of the federal *Conflict of Interest Code for Members of the House of Commons* in (2004, and amendments in 2009);
  - n. Enactment and amendment of the federal *Lobbyists' Code of Conduct* (1997 and 2015 versions).
5. 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.
6. Democracy Watch has also pursued the advancement of accountability in democratic governance before the courts. Democracy Watch appeared 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 appointment process, independence and rulings of the federal Ethics Commissioner, and the federal Commissioner of Lobbying, and their predecessors. In addition, Democracy Watch has filed proceedings concerning rulings of the British Columbia Conflict of Interest Commissioner, and Ontario's Integrity Commissioner. Most recently, Democracy Watch has filed proceedings concerning the snap election calls by the Premier of British Columbia and the Premier of New Brunswick.

7. Proceedings that Democracy Watch has pursued or intervened in before the courts include but are not limited to the following:
  - 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;
  - l. *Democracy Watch v. Ontario Integrity Commissioner*, 2020 ONSC 6081;

- m. *Democracy Watch v. Canada (Attorney General)*, (Federal Court File No. 6 T-915-120);
  - n. *Democracy Watch v. Canada (Attorney General)*, (Federal Court File No. T-916-120);
  - o. *Democracy Watch and Wayne Crookes v. British Columbia (Premier and Lieutenant Governor)*, (B.C. Supreme Court File No. S2010710), and;
  - p. *Democracy Watch v. New Brunswick (Premier and Lieutenant Governor)*, (New Brunswick Court of Queen's Bench File No. FM-90-20).
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. Cases (l) to (p) above have not proceeded to the point of the issue of standing being considered by the court.

### **Canada's federal judicial appointments system**

9. Canada's federal judicial appointments system is the mechanism by which judges are appointed to provincial and territorial superior courts, provincial and territorial courts of appeal, the Federal Court of Canada, and the Federal Court of Appeal.
10. The system involves Judicial Advisory Committees ("**JACs**") for each province and territory that review applications and recommend long lists of qualified candidates to the federal Minister of Justice.
11. As described on the website of the Office of the Commissioner for Federal Judicial Affairs Canada ("**Commissioner**"), the federal Minister of Justice and Governor in Council ("**GIC**") appoint a majority of the seven members of each JAC. The Minister appoints:
- a. three of the members directly;
  - b. one from a list of nominees submitted by the Law Society of the province/territory;
  - c. one from a list of nominees submitted by the provincial or territorial chapter of the Canadian Bar Association;

- d. one from a list of nominees submitted by the jurisdiction's Attorney General, and; 7

then the chief judge of the jurisdiction chooses the last member of each committee. The Commissioner is also appointed by, and serves at the pleasure of, the GIC, under section 73 of the *Judges Act* (R.S.C., 1985, c. J-1). Attached hereto and marked as **Exhibit "C"** is a printout of the "Federal Judicial Advisory Committees" webpage from the website of the Commissioner, accessed December 15, 2020. See that page at: <https://www.fja.gc.ca/appointments-nominations/committees-comites/members-membres/index-eng.html>.

12. As the above cited webpage states, the Chair and the members of each JAC "are appointed by the federal Government for 2 year terms with the possibility of renewal at the Government's discretion."

13. After reviewing applications from people who apply to be judges, each jurisdiction's JAC submits a long list of nominated candidates to the Minister.

14. According to a 2019 briefing note from Deputy Minister of Justice Nathalie Drouin to Minister of Justice David Lametti quoted in a media article:

"Under the current framework, there are no formal constraints placed on the manner in which the minister of justice decides which candidates to recommend for appointment, nor on the degree to which he involves cabinet colleagues in scrutinizing the candidate."

Attached hereto and marked as **Exhibit "D"** is a printout of "Liberal insider warned of 'potential for a scandal' in judicial appointment process" by Daniel LeBlanc, CBC.ca, October 20, 2020, accessed online at: <https://www.cbc.ca/news/politics/judicial-appointment-trudeau-lametti-wilson-raybould-1.5767933>.

15. According to articles in the media quoting emails and documents of Government of Canada officials, before making the final choice of whom to recommend to the Committee of the Privy Council as the person to be appointed as a judge in any

jurisdiction, or to the federal courts, the Minister and/or the Prime Minister's office ("**PMO**") share each list of candidates with GIC members, and consults with Members of Parliament ("**MPs**") of the ruling party only concerning nominated candidates from their electoral district association area. Attached hereto and marked as **Exhibit "E"** is a printout of "E-mails reveal network of Liberals involved in judicial appointments" by Daniel LeBlanc, *Globe and Mail*, February 18, 2020, accessed online at:

<https://www.theglobeandmail.com/politics/article-e-mails-reveal-network-of-liberal-officials-involved-in-judicial/>.

16. According to articles in the media quoting emails and documents of Government of Canada officials, before making the final choice of whom to appoint, the Minister and/or the PMO have also shared lists of nominated candidates with officials of the ruling party, and with supporters of the ruling party. For example, for judicial appointments in Alberta, the PMO asked for the input of Robbie Schuett, president of the Liberal Party's Alberta branch. See **Exhibit "D"** article.
17. Members of the GIC also consult with others concerning nominated candidates. In 2018, then-Minister of Natural Resources Jim Carr (subsequently Minister of International Trade Diversification) asked his spouse, Justice Colleen P. Suche of the Court of Queen's Bench for Manitoba, for recommendations on nominated candidates for federal judicial appointments, and then they both submitted the same list of recommendations to the federal Minister of Justice.
18. On April 28, 2020, the Canadian Judicial Council issued a letter reprimanding Madam Justice Suche for her actions. Attached hereto and marked as **Exhibit "F"** is a printout of the Canadian Judicial Council's April 28, 2020 letter, accessed online at: <https://cjc-ccm.ca/sites/default/files/documents/2020/19-0631%20Letter%20to%20Mr%20Rob.%20Moore%202020-04-28.pdf>. Attached hereto and marked as **Exhibit "G"** is a printout of "Manitoba judge criticized for advising Liberal government on judicial appointments" by Daniel LeBlanc,

<https://www.theglobeandmail.com/canada/article-manitoba-judge-criticized-for-advising-liberal-government-on-judicial/>.

19. According to media articles, the current PMO also checks the background of nominated candidates for the judiciary using the Liberal Party of Canada's database. A study by the *Globe and Mail* found that, according to the database of political donations maintained by Elections Canada, 25 percent of judges appointed by the Liberal GIC from 2016 to 2019 had, since 2000, donated to the Liberal Party of Canada, while only approximately six percent had donated to the Conservative Party of Canada, the New Democratic Party of Canada ("**NDP**") or the Green Party of Canada. The study also found that 90.9 of the total amount donated was donated to the Liberal Party, 4.2 percent to the Conservative Party, 4.7 percent to the NDP, and 0.1 percent to the Green Party. Attached hereto and marked as **Exhibit "H"** is a printout of "PMO vets potential judges with private Liberal database" by Daniel LeBlanc, *Globe and Mail*, April 24, 2019, accessed online at: <https://www.theglobeandmail.com/politics/article-pmo-vets-potential-judges-with-liberal-database/>. Attached hereto and marked as **Exhibit "I"** is a printout of "PMO's background checks on potential judges reveal more than a decade of partisan past" by Daniel LeBlanc and Tom Cardoso, *Globe and Mail*, April 30, 2019, accessed online at: <https://www.theglobeandmail.com/politics/article-pmos-background-checks-on-potential-judges-reveal-more-than-a-decade/>.
  
20. A study that was verified and published by the *National Post* and made public in December 2020 found that, according to the database of political donations maintained by Elections Canada, 28 percent of judges appointed or promoted by the Liberal GIC from 2016 through 2020 had donated solely to the Liberals in the past, compared to seven percent who had donated solely to the Conservatives, and one percent who were solely NDP donors. Attached hereto and marked as **Exhibit "J"** is a printout of "Past Liberal donors still favoured for judicial

appointments under Trudeau, Tories allege with new data” by Brian Platt, 10  
*National Post*, December 11, 2020, accessed online at:

<https://nationalpost.com/news/politics/past-liberal-donors-still-favoured-for-judicial-appointments-under-trudeau-tories-allege-with-new-data>.

21. After the Minister of Justice consults with MPs and party officials in the ruling party only, federal judicial appointments are made by Order in Council of the Committee of the Privy Council, on the recommendation of the Minister of Justice. For example, attached hereto and marked as **Exhibit “K”** is a printout of the Order in Council 2020-1019, dated December 9, 2020, appointing a judge to the Court of Queen’s Bench of Saskatchewan, accessed online at:

<https://orders-in-council.canada.ca/attachment.php?attach=40031&lang=en>.

Also for example, attached hereto and marked as **Exhibit “L”** is a printout of the Order in Council 2017-1376, dated November 9, 2017, appointing a judge to the Federal Court of Canada, accessed online at: <https://orders-in-council.canada.ca/attachment.php?attach=35286&lang=en>.

### **Canada’s appointment system of sitting judges to appeal courts**

22. There is no application process, and there are no JACs involved, in Canada’s federal appointment system of sitting judges to appeal courts. The Minister of Justice, after whatever consultation the Minister decides to undertake, recommends the promotion of a sitting judge to a court of appeal, and the Committee of the Privy Council makes the appointment. For example, attached hereto and marked as **Exhibit “M”** is a printout of the Order in Council 2020-0624, dated September 2, 2020, appointing a judge to the Court of Appeal for British Columbia, accessed online at: <https://orders-in-council.canada.ca/attachment.php?attach=39599&lang=en>.

### **Public concerns about Canada’s judicial appointments system**

23. Concerns have been expressed for decades by many members of the public about political interference in Canada’s judicial appointments system. The

concerns have been based on evidence, disclosures and statements that have 11 pointed to political interference. An example from recent years is the statement made by Prime Minister Stephen Harper in 2007 that:

“We're bringing forward laws to make sure that we crack down on crime - that we make our streets and communities safer. We want to make sure our selection of judges is in correspondence with those objectives.”

Attached hereto and marked as **Exhibit “N”** is a printout of “Harper says he wants more law-and-order judges” by CTVNews.ca staff, CTVNews.ca, February 14, 2007, accessed online at: <https://www.ctvnews.ca/harper-says-he-wants-more-law-and-order-judges-1.229207>. Attached hereto and marked as **Exhibit “O”** is a printout of “Stephen Harper’s courts: How the judiciary has been remade” by Sean Fine, *Globe and Mail*, July 24, 2015, accessed online at: <https://www.theglobeandmail.com/news/politics/stephen-harpers-courts-how-the-judiciary-has-been-remade/article25661306/>.

24. Concerns about political influence and interference were also expressed in response to a questionnaire and interviews conducted by 20 members of the International Commission of Jurists Canada (“**ICJ Canada**”) in the fall of 2015 through the winter of 2016. ICJ Canada found the:

“perception that judicial appointments were political, in the sense that political affiliations and an applicant’s views on such matters as criminal justice policy, as an example, were important”

and that the screening process by the JACs and the Minister of Justice was “described by some responses as a ‘back room’ process” (pp. 9-10). The ICJ recommended changes to restrict the discretion of the Minister in appointing members of the JACs and in appointing and promoting judges (p. 19). Attached hereto and marked as **Exhibit “P”** is a printout of *Interim Report: The Canadian Federal Judicial Appointments Process and Opportunities for Reform*, ICJ Canada, August 2016, accessed online at: <https://democracywatch.ca/wp-content/uploads/IntlCommOfJuristsInterimReportAug2016.pdf>.

25. Lawyers and law professors have in years past also expressed concern about 12 political influence and interference in federal judicial appointments, and pointed to the reformed system in the United Kingdom that greatly restricts the discretion of Cabinet ministers by having advisory committees nominate only one candidate for each vacancy in the judiciary. For example, attached hereto and marked as **Exhibit “Q”** is a printout of “Why we need a constitutional challenge on judicial appointments” by Joseph Arvai, Sean Hern and Alison Latimer, *Globe and Mail*, August 6, 2015, accessed online at: <https://www.theglobeandmail.com/opinion/why-we-need-a-constitutional-challenge-on-judicial-appointments/article25867097/>. For another example, attached hereto and marked as **Exhibit “R”** is a printout of “From the U.K., a lesson on judicial appointments” by Joanna Harrington, *Globe and Mail*, July 2, 2015, accessed online at: <https://www.theglobeandmail.com/opinion/from-the-uk-a-lesson-for-canada/article25733842/>.
26. Lawyers, professors and public commentators have also expressed concern more recently about political influence and interference in the current federal judicial appointments system. For example, attached hereto and marked as **Exhibit “S”** is a printout of “Liberals under fire for partisan involvement in judicial appointments” by Daniel LeBlanc and Sean Fine, *Globe and Mail*, February 18, 2020, accessed online at: <https://www.theglobeandmail.com/politics/article-liberals-under-fire-for-partisan-involvement-in-judicial-appointment/>. For another example, attached hereto and marked as **Exhibit “T”** is a printout of “If you want to be appointed a judge, there are Liberal steps to the bench” by Campbell Clark, *Globe and Mail*, February 19, 2020, accessed online at: <https://www.theglobeandmail.com/politics/article-if-you-want-to-be-appointed-a-judge-there-are-liberal-steps-to-the/>. For another example, attached hereto and marked as **Exhibit “U”** is a printout of “The Liberal process for appointing judges is transparent and non-partisan, except when it isn’t,” *Globe and Mail* editorial, February 23, 2020, accessed online at: <https://www.theglobeandmail.com/opinion/editorials/article-the-liberal-process->

[for-appointing-judges-is-transparent-and-non/](#). For another example, attached 13 hereto and marked as **Exhibit “V”** is a printout of “Ottawa’s halting path away from political patronage remains a perilous one” by Peter Russell, *Globe and Mail*, May 15, 2020, accessed online at: <https://www.theglobeandmail.com/opinion/article-ottawas-fragile-halting-journey-away-from-political-patronage/>.

27. On November 6, 2020, the Canadian Bar Association President issued a statement on federal judicial appointments that including the following expressions of concern about political influence and interference in appointments:

“It can be argued that the political vetting of judicial applicants – which happens after the Judicial Advisory Committees have made their recommendations – has been a factor in the number of vacancies on the bench, which is a direct contributor to court delays and the access to justice crisis in Canada.”

...

“By continuing a process that is open to speculation about political interference, the government risks eroding the confidence of the public in the independence and fairness of the justice system itself – particularly in marginalized communities that already feel the system doesn’t work for them.

...

“The CBA does not believe that prior political involvement should exclude a prospective applicant from the bench – in fact, it’s one indication of community engagement that may point to a good judge. It is when partisan activity becomes the deciding factor in an appointment that we have a problem.

It is time to make the system less open to manipulation.”

Attached hereto and marked as **Exhibit “W”** is a printout of *Statement of the CBA President on Judicial Appointments*, Canadian Bar Association, November 6, 2020, accessed online at: <https://www.cba.org/News-Media/Press-Releases/2020/November/Statement-from-the-CBA-President-on-judicial-appointments>.

28. While I believe it is very difficult to confirm a direct causal connection between the federal judicial appointments system and the lack of diversity in the federal

courts, it is possible that the extent of the participation of politicians in the 14  
appointment process is a factor. The lack of diversity of the federally appointed  
courts compared to the demographic makeup of the Canadian population is  
confirmed. Attached hereto and marked as **Exhibit “X”** is a printout of the  
“Statistics regarding Judicial Applicants and Appointees” webpage from the  
website of the Commissioner, accessed December 15, 2020. See that page at:  
[https://www.fja.gc.ca/appointments-nominations/StatisticsCandidate-  
StatistiquesCandidat-2020-eng.html](https://www.fja.gc.ca/appointments-nominations/StatisticsCandidate-StatistiquesCandidat-2020-eng.html).

29. A study of federal judicial appointments from 1972 to 2013 found that a system  
that allows the connection of nominated candidates as donors to the ruling party  
to be a factor that is considered when making appointments to the judiciary  
negatively affects the appointment of women to provincial superior courts. To  
counter this negative effect, the study recommended a system with a more  
independent advisory committee that nominates a very short list of candidates to  
the Minister of Justice, as in Ontario’s system for appointing provincial court  
judges. Attached hereto and marked as **Exhibit “Y”** is “The Politics of Judicial  
Appointment: Do Party Connections Impede the Appointment of Women to  
Canada’s Federally Appointed Courts?” by Erin Crandall and Andrea Lawlor,  
[\*Canadian Journal of Political Science\* 50, no. 3 \(May 16, 2017\): 823–47.](#)

30. The lack of diversity of judges of the federal courts is of public concern and  
affects the public’s confidence in the judiciary. In June 2020, Chief Justice of the  
Supreme Court of Canada Richard Wagner stated:

"All Canadians should be able to see themselves reflected in their justice  
system. Justice should not make a person feel like an outsider or an  
'other' when they confront it."

...

"I also think there is a growing awareness of the need for our courts,  
including our highest court, to reflect the diversity of Canadians. I certainly  
would welcome the insights and perspectives this could bring."

Attached hereto and marked as **Exhibit “Z”** is a printout of “Supreme Court’s  
chief justice calls for more diversity in Canada’s legal system” by Kathleen Harris,

CBC.ca, June 18, 2020, accessed online at:

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<https://www.cbc.ca/news/politics/supreme-court-wagner-racism-courts-1.5617681>.

31. In September 2020, 36 bar associations, legal clinics and advocacy groups submitted an open letter to the Minister of Justice calling for the appointment of Black, Indigenous and People of Colour (“BIPOC”) judges to the federal courts. Attached hereto and marked as **Exhibit “AA”** is a copy of the letter, accessed online at: <https://carl-acaadr.ca/wp-content/uploads/2020/09/EN-Letter-to-the-Min-of-Justice-1.pdf>. Attached hereto and marked as **Exhibit “BB”** is a printout of “Fill the six vacancies on the Federal Court with Black, Indigenous and People of Colour judges, legal groups urge Ottawa” by Nicholas Keung, *Toronto Star*, September 14, 2020, accessed online at: <https://www.thestar.com/news/canada/2020/09/14/fill-the-six-vacancies-on-the-federal-court-with-black-indigenous-and-people-of-colour-judges-legal-groups-urge-ottawa.html>.

32. I make this affidavit in support of the Applicants’ application concerning the constitutionality of Canada’s federal judicial appointments and promotions process, and for no other or improper purpose.

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

\_\_\_\_\_  
Commissioner for taking affidavits

\_\_\_\_\_  
Duff Conacher