

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

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

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**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. 2
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: 3

- 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 (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;
- 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). 4

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 6  
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 day of November 2020 )  
in the City of Toronto )  
in the Province of Ontario. )

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Commissioner for taking affidavits

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Duff Conacher