

FEDERAL COURT

B E T W E E N

DUFF CONACHER and DEMOCRACY WATCH

Applicants

- and -

**THE PRIME MINISTER OF CANADA,
THE GOVERNOR IN COUNCIL OF CANADA,
THE GOVERNOR GENERAL OF CANADA and
THE ATTORNEY GENERAL OF CANADA**

Respondents

AFFIDAVIT OF GAIL FLORENCE NESTEL

I, **GAIL FLORENCE NESTEL**, of the **City of Victoria** in the province of **British Columbia** MAKE OATH AND SAY AS FOLLOWS :

1. I am currently a Masters Level Education (M'ED) candidate at the University of Victoria, British Columbia in The Faculty of Education, Leadership Studies, currently specializing in the integration of Multi-faith and Multi-cultural curriculum and inclusion in Education and Policy Development. For 25 years I have worked in cultural and disability inclusion in accordance with section 15 of the Charter of Rights and Freedoms. I am also a TESL Ontario trained, English as a Second Language Instructor, Thus, I am familiar with the importance of full inclusion of religious, cultural and ethnic groups in

the fabric of Canadian society and have instructed students on issues of full citizenship and participation in the electoral process.

2. I am a Canadian Jew. The Election Day, October 14, 2008, was on 'Succot', the Jewish days of Thanksgiving. It is a time for a range of family, cultural and religious activity. Orthodox Jews and others, who keep all the conduct rules of this holy day cannot write, and therefore cannot vote, on such a day. Most Jews, who do not keep all the conduct rules, recognize it as an ethnic and cultural day. Although I am willing to write on Succot, I am not willing to have my citizenship diminished by my holiday and ethnic group being overlooked for an election. I felt that if I voted in the advanced polls, my vote would be based on a lack of leader and candidate information in its entirety; but I, as a Jewish citizen was diminished by my having been put in that position. Similarly, if I had gone to the advanced polls with Orthodox Jews as a group, my citizenship would have been and is diminished by voting without completing the entirety of the electoral period and therefore deprived of a 'level playing field', with other non-Jewish Canadians.. Ultimately, our dignity and full inclusion as Canadian citizens was compromised. As such, this cultural insult obstructs 'reasonable accommodation'.

3. The election was called for October 14 in spite of the fact that the Prime Minister was specifically asked not to have it on that day by two Jewish organizational groups. For me, this is an insult to the recognition of my own full and individual citizenship and my choice to celebrate my faith and ethnicity, even though B'nai Brith Canada and The Canadian Jewish Congress reluctantly accepted the decision of Prime Minister Harper.

4. Attached to this affidavit as Exhibit "A" is a true copy of the press release of B'nai Brith taken from its website <http://www.bnaibrith.ca/prdisplay.php?id=1375>

5. Attached to this affidavit as Exhibit "B" is a true copy of the press release of the Canadian Jewish Congress taken from its website

<http://www.cjc.ca/template.php?action=news&story=976> .

6. A B'nai Brith International representative is running for the Conservative Party in this election. Attached to this affidavit as Exhibit "C" is a true copy of a page from the website of this candidate taken from

http://www.conservative.ca/?section_id=1051&linkTo=true&districtId=1651 .

7. These two organizations do not speak for all Jewish citizens on all issues.

8. Orthodox Jews and other Jews, who wish to both vote and celebrate Succot must attend advanced polls. The Conservative Party Platform was released on October 7, the day that advanced polls closed. Those who were forced to vote at advanced polls therefore did not have time to analyze that Platform before voting.

9. Part of the *Canada Elections Act* reads as follows:

Date of General Election

Powers of Governor General preserved

56.1 (1) Nothing in this section affects the powers of the Governor General, including the power to dissolve Parliament at the Governor General's discretion.

Election dates

(2) Subject to subsection (1), each general election must be held on the third Monday of October in the fourth calendar year following polling day for the last general election, with the first general election after this section comes into force being held on Monday, October 19, 2009.

2007, c. 10, s. 1.

Alternate day

56.2 (1) If the Chief Electoral Officer is of the opinion that a Monday that would otherwise be polling day under subsection 56.1(2) is not suitable for that purpose, including by reason of its being in conflict with a day of cultural or religious significance or a provincial or municipal election, the Chief Electoral Officer may choose another day in accordance with subsection (4) and shall recommend to the Governor in Council that polling day be that other day.

10. Succot is a day of cultural and religious significance for Jewish citizens of Canada.

My understanding is that the Chief Electoral Officer did not have the right to consider whether Succot is a suitable day for an election because the date of October 14 was chosen by Prime Minister Harper rather than by operation of subsection 56.1(2).


As a Canadian Jew, I am questioning why section 56.2 would not be applied to a randomly government chosen election day, such as this one, in an equitable fashion.

11. October 16, 2008 is a day that is not any Multi-faith holiday,

SWORN BEFORE ME at)
the City of Victoria, in the)
Province of British Columbia)
this 17 day of October, 2008)



A Commissioner, etc.



GAIL FLORENCE NESTEL

KARINA V. SACCA
Barrister & Solicitor
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CJC

The Jewish community's official voice on public affairs

קאנאדער יידישער קאנגרעס

CANADIAN JEWISH CONGRESS

הקונגרס היהודי הקנדי

Le porte-parole officiel de la communauté juive en matière d'affaires publiques

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COMMUNIQUÉ

Sep 05, 2008 - CJC receives call from PM about election date

OTTAWA -Canadian Jewish Congress Co-President Rabbi Reuven Bulka received a phone call from Prime Minister Stephen Harper, during which they discussed the government's decision to hold the federal election on October 14, coinciding with the Jewish observance of Succot.

"We were very pleased the Prime Minister chose to contact us directly to talk about this issue, which demonstrated a sincere understanding of our community," said Bulka. "It was clear from the conversation that the Prime Minister remains very sensitive to these matters, and he explained in detail why he chose this date."

"We know Prime Minister Harper is a man of faith, and understand the challenges he must have faced in determining a date for the election," Bulka noted. "We understand that there will be numerous advance polls at which all Canadians may vote, and that during the course of the writ period, citizens may vote at any Elections Canada office. We will be sharing this information with members of our community to ensure they can participate as fully as possible in the election process," he said.

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CONTACT:

Bernie M. Farber, CEO
Canadian Jewish Congress
bfarber@on.cjc.ca

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Canadian Jewish Congress Ontario Region (CJCONT) strongly denounces the desecration of the Devi Mandir Temple in Pickering.



CJC works with Elections Canada: Information on advance voting available on CJC website in five languages



Canadian Jewish Congress-Pacific Region and S.U.C.C.E.S.S. Express Solidarity with the Lesbian, Gay, Transgendered, and Bisexual (LGTB) Community

This is Exhibit "A" referred to in the affidavit of Gail Florence Nestel sworn before me, at Vancouver this 11 day of October 2008

A COMMISSIONER FOR TAKING AFFIDAVITS FOR BRITISH COLUMBIA

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JEWISH TRIBUNE REPORT A HATE CRIME SUBSCRIBE TO JEWISH CANADA DONATE SPORTS PROGRAMS

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'Scheduling of election on Jewish holiday regrettable, yet understandable,' says B'nai Brith Canada, following discussion initiated by PM Harper

Posted On 09/05/08
FOR IMMEDIATE RELEASE

ADVOCACY PRESS RELEASES PUBLICATIONS CAMPUS CND JEWISH LAW STUDENTS NIZKOR-HOLOCAUST DOCS

'Scheduling of election on Jewish holiday regrettable, yet understandable,' says B'nai Brith Canada, following discussion initiated by PM Harper

COMMUNITY EVENTS B'NAI BRITH LODGES PEOPLE IN THE NEWS B'NAI BRITH FILM

OTTAWA, September 5, 2008 – Prime Minister Stephen Harper has been in ongoing discussion with B'nai Brith Canada over his decision to hold an election on October 14, 2008, the Jewish holiday of Succot. The Jewish human rights organization, which would have preferred an election date that did not coincide with a significant day on the calendar of the Jewish religion, nevertheless characterized the Government's decision as "understandable" in light of electoral campaign laws and international obligations.

"Prime Minister Harper has personally reached out to the Jewish community and contacted B'nai Brith regarding his decision to hold the upcoming federal election on a date that falls on a Jewish holiday," said Frank Dimant, Executive Vice President of B'nai Brith Canada. "While it is regrettable that the Prime Minister ultimately settled on the date of Succot, we understand that the government had only the narrowest window of opportunity to schedule an election. We also recognize that the Prime Minister has made every sincere effort to arrive at a resolution that would not impose limitations on Orthodox Jews.

"Unlike previous elections, there is currently in place a new set of electoral laws that provide ample alternatives for voters to cast their ballot on days other than the scheduled election date. We appreciate the careful deliberation of the Prime Minister Harper on this sensitive matter to the Jewish community. B'nai Brith will work with Jewish community members to ensure their full participation in the election process."

B'nai Brith Canada will be convening Town Hall pre-election debates across the country to bring issues of Jewish community concern to the fore. The first is to take place in Toronto on Wednesday, September 10 in the riding of Don Valley West. B'nai Brith will shortly release an Election Task Force Guide titled, 'Issues of Concern and Recommendations for Action' that will be accessible on the organization's website www.bnaibrith.ca.

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For further information contact Karen Lazar, Director of Communications:
416-633-6224 X 140 office / 416-312-9173 cell

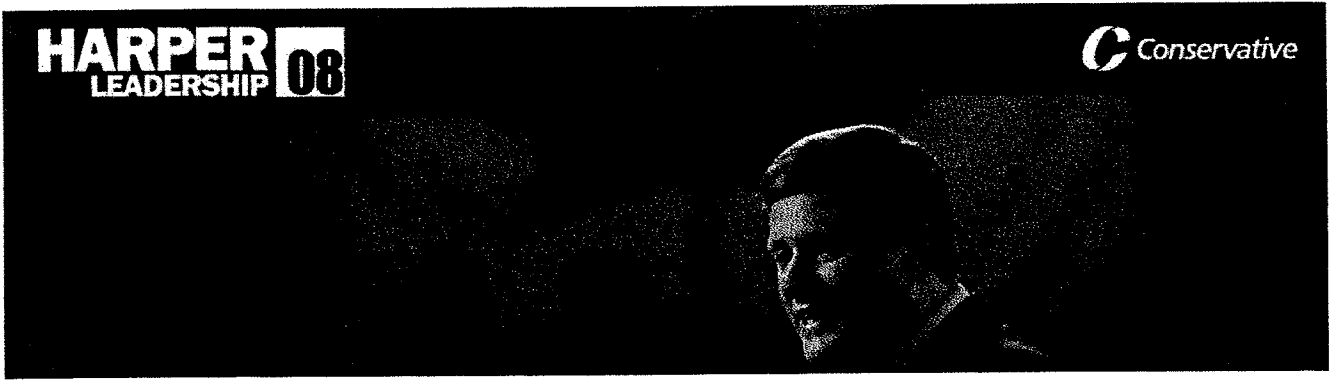
B'nai Brith Canada has been active in Canada since 1875
as the Jewish community's foremost human rights organization



This is Exhibit "B" referred to in the affidavit of Frank Dimant sworn before me, at Vancouver this 17th day of October 2008

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[Signature]
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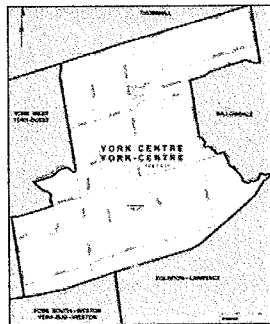
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York Centre

Rochelle Wilner is a certified teacher in the province of Ontario with additional qualifications in special education. She has long been interested in issues affecting the community, particularly education and combating anti-semitism, along with all forms of discrimination and hate.



Since 1990, Rochelle has held many positions with B'nai Brith Canada including national chair and national president of both the League for Human Rights and the Institute for International Affairs.



In 1998, Rochelle was invited by the Canadian Government to be one of two NGO delegates to the Washington Conference on Holocaust Era Assets. In 2000, she was a member of the Canadian delegation at the follow-up International Forum on Holocaust Education, Remembrance and Research held in Stockholm.

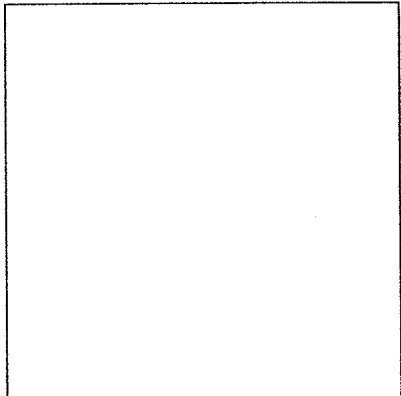
Rochelle has worked with many multicultural, ethnic and community groups and organizations to encourage and promote mutual understanding, co-operation and partnership programs.

Rochelle is the recipient of a number of awards for her efforts on behalf of the Jewish community and Canadian social justice issues, including the Queen's Golden Jubilee Medal.

Rochelle is married to Sid. Their family consists of four children and three granddaughters.

GET IN TOUCH

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Grid of social media and action buttons: DONATE, JOIN, HELP, HARPER SIGNS, SHOP, VOTE.

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This is Exhibit "C" referred to in the affidavit of Nail Fisman, N.A.A.A. sworn before me, at Victoria this 17th day of October 20 08. A COMMISSIONER FOR TAKING AFFIDAVITS FOR BRITISH COLUMBIA