Court File Number: T-1620-17

Between:

Dr. David Kattenburg

Applicant

And

The Attorney General of Canada

Respondent

Affidavit of Adv. Michael Sfard

I, Michael Sfard, of Tel-Aviv, Israel, SOLEMNLY AFFIRM THAT:

A. INTRODUCTION

1. I am a citizen and resident of Israel. I am a member of the Israel Bar Association. As such, I am qualified to practice law in the Courts of Israel. I specialize in international human rights law, international humanitarian law and Israeli administrative law. I have an LL.B. from the law faculty of the Hebrew University of Jerusalem and an LL.M. in international human rights law from the University College of London ("UCL").
2. Counsel for Dr. David Kattenburg (the "Applicant") has requested that I serve as an expert witness in this matter and that I provide my opinions on issues that are within my field of expertise. Those issues are identified below.

B. QUALIFICATIONS TO RENDER MY OPINIONS

3. My academic studies and legal training, as well as my nearly two decades of practice as an attorney involved in some of the most important cases challenging Israeli policies and practices in the Occupied Palestinian Territories (hereafter "OPT"), have provided me with the knowledge base and experience in the subject matter of my opinion.

4. Of these experiences, I highlight the following:

- I served as the legal counsel to the Israeli human rights organization "Yesh Din" (Hebrew for "There is a law") since its establishment in 2005. Yesh Din campaigns to enhance the respect and protection afforded to the basic human rights of Palestinians in the OPT through, among others things, litigating in the Israeli courts and military tribunals, publishing reports, and representing victims of human rights abuses before Israeli military and governmental authorities.
- For more than a decade, I have served as legal counsel for the Settlement Watch program, which was established by and operates within the biggest and oldest Israeli peace group – Peace Now. The program monitors the establishment and expansion processes of Israeli official and unofficial settlements in the OPT, publishes reports and initiates litigation to halt unpermitted construction and land theft.
- I was the lead counsel for petitioners in at least three dozen Israeli High Court of Justice (hereinafter "HCJ") petitions filed in the last twelve years arising from settlement or outpost expansion activity and/or denial of access to Palestinian farm lands. In those petitions, I represented Israeli

organizations as well as Palestinian individuals and communities/local councils.

- I have written extensively about the legal issues relevant to the current opinion, both academically and for the general public. I have published Op-Eds, academic articles and academic and popular books on the subject.

5. In June 2013, I received the Emil Grunzweig Human Rights Award, which is awarded by the Association for Civil Rights in Israel, to "an individual or NGO that has made a unique contribution to the advancement of human rights in Israel."
6. In 2014, I won a fellowship with the Open Society Foundations to research and write about the four decades of human rights litigation in the Israeli courts, in the context of the Israeli occupation of the OPT.
7. My Curriculum Vitae is attached hereto as **EXHIBIT "A."**
8. Given my experience, I consider myself to be an expert on the issues I was asked by the Applicant's counsel to address, namely: the legal status of the OPT, the legality of the Israeli settlements therein, and the Israeli government's official legal position on those questions.
9. In addition to the materials cited in the report, I have also reviewed the following materials which were given to me by the Applicant's counsel:
    i. Notice of Application (case number: T-1620-17);
    ii. Applicant's attorney letter to the Canadian Department of Justice, Ontario regional office, dated November 9, 2017; and
    iii. Department of Justice letter to Applicant's attorney, dated December 5th, 2017.

C. Summary of my Opinions

10. Below, I render the following opinions:

I. According to international law, the West Bank does not lie within the recognized boundaries of the State of Israel;

II. The West Bank is considered *Occupied Territory* within the meaning of the term under international humanitarian law.

III. The Israeli settlement enterprise[1] in the West Bank constitutes a violation of both customary international humanitarian law and a specific prohibition contained in the *Fourth Geneva Convention*.

IV. The West Bank (except east Jerusalem) is not considered sovereign territory of the State of Israel under Israeli law, but rather a 'disputed territory' to which the State of Israel has claims and/or an occupied territory that is held according to the laws of belligerent occupation.

V. I reserve the right to author additional opinions or rebuttal opinions.

D. Discussion and Grounds for my Opinions

11. Following the end of the British Mandate in 1948, the State of Israel was created in part of what had been Mandatory Palestine by a United Nations (UN) partition with the aim of establishing two democratic states – one with a Jewish majority and the other with a Palestinian Arab majority (see UN General Assembly Resolution 181 (II), 1947).

12. Following the 1948-49 civil war in Mandatory Palestine and simultaneous war between Israel and the Arab countries, an Armistice Line (termed "The Green Line") was established in 1949 by agreements between Israel and the Arab states of Egypt, Lebanon, Syria and

[1] I define the "settlement enterprise" to be the establishment of Israeli settlements, outposts, and industrial zones in the OPT, the expansion thereof, and any activity that is aimed at facilitating their development and growth.

Jordan, which was different from the borders set in the UN Partition Plan, providing the State of Israel control over a larger area (see UN Security Council ("UNSC") Resolution 72, February 23, 1949. [S/1264]; UNSC Res. 72, March 23, 1949. [S/1296]; UNSC Res. 72, April 3, 1949 [S/1302]; UNSC Res. 72, July 20, 1949. [S/1353]). The Armistice Agreements must be read in conjunction with UNSC Resolution 62 of November 16, 1948, which obliged the parties to establish "permanent armistice demarcation lines" in order to ensure "the transition to permanent peace in Palestine" ([S/1080]).

I LEGAL STATUS OF THE WEST BANK

13. The field of international law that governs the legal questions discussed in this opinion is known as international humanitarian law ("IHL"). IHL defines the international legal rights and obligations of states and other participants and/or stakeholders during armed conflict. It is also known as the law of war or the law of armed conflict. It is not to be confused with international human rights law. The core rules of IHL are set out in the four Geneva Conventions of 1949. Along with the earlier Hague Convention of 1907, these constitute the central source of IHL. The *1907 Hague Convention*, as well as the *Fourth Geneva Convention*, are referred to extensively below.

14. A key player in IHL is the International Committee of the Red Cross ("ICRC"). The ICRC is an international organization headquartered in Geneva that acts as a sort of custodian of IHL. It plays an important role, enshrined in the Geneva Conventions, in monitoring compliance with IHL, particularly with respect to the rights of certain classes of protected persons. The ICRC sometimes issues opinions on the content of IHL. Because of the ICRC's central role in IHL, its opinions are generally considered authoritative.

15. The 1967 war between Israel and its Arab neighbors, Egypt, Jordan and Syria, resulted in Israel taking belligerent military control of the West Bank and East Jerusalem, among other territories.

16. Since then, the UNSC has consistently and continuously expressed its position that the territories conquered by Israel are *occupied* (see UNSC Resolutions 242, 338, 446 and, most recently, 2334).

17. East Jerusalem was formally annexed by Israel in 1980, but this annexation has not been recognized by the international community (see, among others, UNSC Resolutions 476 and 478). Even the exceptional Trump declaration of December 6, 2017 recognizing Jerusalem as the capital of the State of Israel (which was denounced by the UN General Assembly Resolution A/RES/ES-10/19 of December 21, 2017 adopted by a 128 to 9 majority), contained an explicit remark that "specific boundaries of sovereignty in Jerusalem is highly sensitive and subject to final status negotiations."

18. The above UNSC and General Assembly resolutions refer to the West Bank as *Occupied Territory* and some refer to the State of Israel as the *Occupying Power*. This position, which enjoys a wide if not unanimous international consensus, is based on the definition of "occupied territory" contained in regulation 42 of the Regulations concerning the Laws and Customs of War on Land, annexed to the *Hague Convention (IV) Respecting the Laws and Customs of War on Land* (The Hague, October 18, 1907, 205 CTS 277; 36 Stat 2277, hereinafter: the "*Hague Regulations*"), which states:

> *Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.*

19. The *Hague Regulations* form a central part of the international laws of belligerent occupation, and are considered to have gained customary status, which means that the norms codified in them apply to all members of the international community regardless of whether they are state parties to the convention.

20. The international community's consensus that the West Bank is *Occupied Territory* is shared by a wide range of international courts and tribunals, the International Committee of the Red Cross, and academics who are expert in the field of international law. All have reached the same legal conclusion. For an overview of the numerous decisions, resolutions and reports of the above mentioned sources, see: *Unprecedented: A Legal Analysis of the Report of the Committee to Examine the Status of Building in Judea and Samaria [the West Bank] ("The Levy Committee") – International and Administrative Aspects* (Tel Aviv: Yesh-Din – Volunteers for Human Rights and The Emile Zola Chair for Human Rights, 2014) http://din-online.info/pdf/yd1e.pdf (hereinafter – the "Yesh Din Report"). Annex B of the Yesh Din report lists more than 200 UN General Assembly resolutions referring to the West Bank as occupied territory, and Part A, Chapter 4 of the report details international political and legal bodies resolutions and rulings on the matter, as well as the ICRC and academic experts' positions.

21. The said position of the international community led it to treat the West Bank (including East Jerusalem) as lying outside Israel's recognized borders. In addition to the above-mentioned UNSC and General Assembly resolutions, some directives and even treaties and agreements with Israel indicate that Israel's borders are the Green Line. See, for example, EU directive and agreement 2013/C 205/05 (July 19, 2013):

> *Guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the EU from 2014 onwards*, Article 3

Agreement between the European Union and the State of Israel on the participation of the State of Israel in the Union programme 'Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020), Article 6(1)

22. **In light of the above, it is my opinion that, according to international law, the West Bank does not lie within the recognized boundaries of the State of Israel, and the West Bank is considered *Occupied Territory* within the meaning of the term under International Humanitarian Law, including the *Fourth Geneva Convention*.**

II ILLEGALITY OF SETTLEMENTS

23. The laws of occupation are based on three underlying principles: *temporariness, absence of sovereignty* and *trust*. In other words, the regime of occupation is based on the idea that effective control by foreign military forces suspends sovereignty temporarily, but does not transfer it to the occupier; that an occupation is a form of trust, the beneficiaries of which are the occupied people; and that the occupier is thus prohibited from introducing systemic or long-term changes to the occupied land.

24. The prohibition on establishing settlements in an occupied territory, legally phrased as the prohibition against transferring parts of the occupying power's civilian population into the occupied territory (Article 49 paragraph 6 of the *Geneva Convention Relative to the Protection of Civilian Persons in the Time of War*, Geneva, August 12, 1949, 75 UNTS 287 [hereinafter: "*GC IV*"), is one of those prohibitions the purpose of which permeates IHL. Unlike, for example, the prohibitions and restrictions on damaging private property in the occupied territory, which are meant specifically to protect the property of protected persons, the prohibition on establishing settlements is aimed at protecting not just one

value, but the entire gamut of values the laws of occupation set out to protect. The prohibition on settling occupied territory is also pivotal to ensuring that the main principles of occupation are upheld: that it is temporary, that the occupied territory is held and managed as a trusteeship, and that the occupying power does not gain sovereignty over the occupied land.

25. Human history teaches us that colonization of an occupied territory, and the changes it brings to the area's demographic makeup, are a crucial step toward eliminating the temporary nature of the occupation and significantly reduce the occupying power's readiness to serve as the protected persons' trustee and act in their best interests. It is also a major step toward bringing the status of the occupying power on par with that of a sovereign. Such developments, in turn, lead to systemic, multidimensional violations of the fundamental rights granted to protected persons under the international laws of occupation and international human rights law: their rights to property, livelihood, freedom of movement, enjoyment of their land's natural resources, equality, and dignity are all at risk. An occupation which forces protected persons to have their land settled with citizens of the occupying power is, by definition, antithetical to the type of regime international law sought to secure through the laws of occupation.

26. For all these reasons, the prohibition on settling an occupied territory was codified in the *Fourth Geneva Convention* (1949). The 6th paragraph of Article 49 states unequivocally:

> *The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.*

27. The prohibition on transferring civilians of the occupying power to the occupied territory is also codified in Article 85(4)(a) of Additional Protocol I to the *Geneva Conventions* (adopted by consensus), and the ICRC study on customary international humanitarian law has found it to have reached a customary status (see: rule 130, .M. Henckaerts and L.

Doswald-Beck (eds.), *Customary International Humanitarian Law*, 2 vols. (Cambridge: Cambridge University Press, 2009 or at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule130#Fn_84AA34DB_00002).

28. The *Statute of the International Criminal Court* (the "*Rome Statute*") has listed the violation of the said prohibition as a war crime and included a clarification as to the type of acts which constitute the crime (Article 8(2)(b)(viii), emphasis added):

> *The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies*

29. Since 1967, numerous UNSC and UN General Assembly resolutions, as well as the reports and Concluding Observations of UN human rights bodies, have all reinforced the position that Israel is occupying the West Bank, and some have also reiterated the prohibition under international law on the establishment of Israeli civilian settlements there (namely according to the *Fourth Geneva Convention*, Article 49(6)). For some of the UN human rights bodies documents addressing the OPT, see: UN General Assembly Resolutions: 446, 465; UN Human Rights Committee Concluding Observations on the civil and political rights: U.N. Doc. CCPR/C/79/Add.93 (1998); U.N. Doc. CCPR/C/ISR/CO/3 (2010); Opinions published by the Committee on the Elimination of all Forms of Racial Discrimination: U.N. Doc. A/49/18, paras. 73-91 (1994); U.N. Doc. CERD/C/304/Add.45 (1998); U.N. Doc. CERD/C/ISR/CO/13 (2007); U.N. Doc. CERD/C/ISR/CO/14-16 (2012); Reports of the Committee on Economic, Social and Cultural Rights: U.N. Doc. E/C.12/1/Add.27 (1998); U.N. Doc. E/C.12/1/Add.90 (2003); U.N. Doc. E/C.12/ISR/CO/3 (2011); Reports of the Committee Against Torture: U.N. Doc. A/49/44, paras. 159-171 (1994); U.N. Doc. A/53/44, paras. 232-242 (1998); U.N. Doc. CAT/C/XXVII/Concl.5 (2001); U.N. Doc. CAT/C/ISR/CO/4 (2009); Reports of the Committee on the Elimination of

Discrimination Against Women: U.N. Doc. A/60/38, paras. 221–268 (2005); U.N. Doc. CEDAW/C/ISR/CO/5 (2011).

30. Additionally, the International Court of Justice (ICJ), in its *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Reports 2004 136 (ICJ Opinion) (hereinafter: the "*Wall* advisory opinion") held, at para. 120, that:

> *"the Israeli settlements in the OPT (including East Jerusalem) have been established in breach of international law"*

31. It is worth noting that, while most of the ICJ's holdings in *Wall* advisory opinion were adopted by a majority of 14-1, with Justice Buergenthal dissenting, he did concur with the majority's above conclusion that the Israeli settlements in the OPT are illegal (see paragraph 9 of Justice Buergenthal's declaration), making it a rare opinion which enjoyed unanimity among the ICJ Justices.

32. Similar conclusions have been reached, as previously mentioned, by the UNSC (recently in UNSC 2334), the UN General Assembly, the High Contracting Parties to the *Geneva Conventions*, the authoritative ICRC study on customary international humanitarian law (ICRC study on illegality of settlements under customary international law), as well as the majority of legal scholars, including many Israelis.

33. It is also the official foreign policy of most of Israel's allies, including the United Kingdom, Canada and the majority of the European Union members, that Israeli settlements in the West Bank are illegal and must not be continued.

34. **In light of the above, it is my opinion that Israeli settlements in the West Bank constitute a violation of customary International Humanitarian Law, and a specific prohibition contained in the *Fourth Geneva Convention*.**

35. It follows from the above conclusion that any activities "that constitute, enable and support the establishment, expansion and maintenance of Israeli residential communities beyond the Green Line of 1949 in the Occupied Palestinian Territory" (see the report of the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, February 7th, 2013, A/HRC/22/63, para. 4) – aid and abet the violation of the prohibition on population transfer and are therefore illegal.

36. It also follows that businesses established in settlements with the purpose of contributing to the economy of individual Israeli settlers or the Israeli settler community as a whole, thus entrenching their presence in the OPT, are to be seen as either a component of the settlement enterprise (and thus illegal under IHL) or as a means for aiding and abetting the violation of the prohibition on population transfer.

The "Blum Argument" on the inapplicability of the *Fourth Geneva Convention* and Article 49(6) to the settlements

37. Israeli government officials have, through the years, made two arguments in international forums relating to its settlements in the OPT. The first is that the *Fourth Geneva Convention* does not apply to Israel's control over the West Bank and the Gaza Strip because Jordan and Egypt, from which they were seized, were never their rightful sovereign. Arguing this position, Israel claims that the test used to decide whether the *Fourth Geneva Convention* applies is to be found in Article 2(2), namely the existence of a "partial or total occupation of the territory of a High Contracting Party," and that this test is not met. This argument was conceived by law professor Yehuda Blum, who served as Israel's UN ambassador in the late 1970s and early 1980s. The second argument Israel usually makes on the legality of the settlements has to do with how the prohibition in the

Geneva Convention is defined. Israeli officials claim that "transfer" refers to a coercive act by the state, and since Israeli settlers move to the settlements voluntarily, the Article does not apply.

38. Neither of Israel's arguments have been accepted. In fact, they have both been scornfully rejected. A summary explanation of the reasons for the rejection of those arguments can be found in a recent article written by one of the world's leading international jurists, professor Theodor Meron, who served as Judge and President of the UN-founded International Residual Mechanism for Criminal Tribunals, Judge and President of the UN International Criminal Tribunal for the former Yugoslavia and Judge of the UN International Criminal Tribunal for Rwanda. In his article, "The West Bank and International Humanitarian Law on the Eve of the Fiftieth Anniversary of the Six-Day War", *The American Journal of International Law* (Vol. 111:2), 357, Professor Meron explains that article 2(2) of the *Geneva Convention* is not relevant to the West Bank, which is governed by article 2(1), and that the prohibition articulated in article 49(6) does not contain a requirement of force, hence applies to the Israeli settlements (p. 361-364, 372-374). I fully subscribe to Professor Meron's legal analysis in the above article.

III ISRAEL'S OFFICIAL POSITION ON THE STATUS OF THE WEST BANK

39. In the first years after 1967, the Government of Israel's (GOI) official position was that the territories it conquered in the 1967 war were "held" and "administered" by its military. The State of Israel has not applied its laws to the territory nor extended the Israeli administration's statutory powers to apply there.

40. When the Israeli Defense Forces (IDF) took control of the Gaza Strip and the West Bank in 1967, the commanders of the two areas issued proclamations stating that the law in force prior to the occupation would remain in place so long as it did not conflict with any future orders.

41. An important exception to the above described approach was the GOI's treatment of east Jerusalem. In 1968, the GOI imposed its law and administration on East Jerusalem (June 28, 1967). It initially objected to the use of the term "annexation" to describe this move, claiming it was done for purely municipal and administrative reasons. In 1980, the Israeli parliament enacted the *Basic Law: Jerusalem, The Capital of Israel*, which settled the matter – Jerusalem was officially annexed. The annexation of Jerusalem in both acts of government and parliament highlights that the State of Israel has opted not to do so regarding the rest of the West Bank.

42. Currently, the GOI's official stance is that West Bank is a disputed territory, the permanent status of which is to be determined through negotiations: "[T]he West Bank is best regarded as territory over which there are competing claims which should be resolved in peace process negotiations," ("Israeli Settlements and International Law," Israeli Ministry of Foreign Affairs website, 30 November, 2015).[2]

43. In addition, throughout the years, Israeli government lawyers representing it before the Israeli High Court of Justice rejected the notion that the West Bank is an *occupied*

[2] http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/israeli%20settlements%20and%20international%20law.aspx

territory, while accepting the framework of IHL (which includes the laws of belligerent occupation) as applying to them (see: M. Shamgar, 'The Observance of International Law in the Administered Territories" (1971) 1 *Israel Yearbook of Human Rights* 117, 266). This very nuanced stance has varied throughout the years, but never included a claim that the West Bank is part of the State of Israel.

44. Israeli official representatives have also clarified in international forums that the State of Israel does not consider the OPT to be part of its "national territory." A good example is the State of Israel's periodic report issued under Article 40 of the *International Covenant on Civil and Political Rights* ("*ICCPR*") to the UN Human Rights Committee in 2013. In that report, Israel denied the applicability of the *ICCPR* to the West Bank, stating it is outside national territory (my emphasis in **bold**):

> **Non-application of the Covenant in the Occupied Palestinian Territory**
>
> 45. The International Convention on Civil and Political Rights (hereinafter: "ICCPR" or "the Convention") is implemented by the Government throughout the State of Israel. According to the Israeli legal system, international conventions, as opposed to customary international law, do not apply directly in Israel, unless they were formally legislated. Such is the case with the ICCPR which is implemented through a wide range of legal instruments, such as basic laws, laws, orders and regulations, municipal bylaws, and court rulings.
>
> 46. The applicability of the Convention to the West Bank has been the subject of considerable debate in recent years. In its Periodic Reports, Israel did not refer to the implementation of the Convention in these areas for several reasons, ranging from legal considerations to the practical reality.
>
> 47. The relationship between different legal spheres, primarily the Law of Armed Conflict and Human Rights Law remains a subject of serious academic and practical debate. For its part, Israel recognizes that there is a profound connection between human rights and the Law of Armed Conflict, and that there may well be a convergence between these two bodies-of-law in some respects. However, in the current state of international law and state-practice worldwide, it is Israel's view that these two

systems-of-law, which are codified in separate instruments, remain distinct and apply in different circumstances.

48. Moreover, in line with basic principles of treaty interpretation, Israel believes that the Convention, which is territorially bound, does not apply, nor was it intended to apply, to areas beyond a state's national territory.

(Israel's periodic Report under Article 40 of the ICCPR, 12 December 2013, CCPR/C/ISR/4, paragraphs 45-48)

45. It should also be noted that, while the Israeli Supreme Court has opted not to rule on the question of the legality of Israeli settlements in the OPT, leaving the question to the political branches of government (HCJ 4481/91 *Bargil* v. *Government of Israel* (1993) 47 PD 210), a long line of Israeli Supreme Court rulings recognize Israel, via its military, as the belligerent occupying power over the West Bank (and Gaza, in judgments rendered prior to the 2005 "Disengagement" plan).

46. Annex A of The Yesh Din report lists more than 60 rulings rendered by the Israeli High Court of Justice in which the court refers to the West Bank and / or the Gaza strip as occupied territory, and explicitly or implicitly as lying outside the sovereign borders of the State of Israel.

47. The seminal case in which the Israeli Supreme Court confirmed that Israel is maintaining an occupation over the West Bank (and Gaza at the time), and that those territories *are not a part of the State of Israel,* is the case of the Gaza Coast Regional (settlement) Council, filed months before the scheduled "disengagement" in 2005 (see HCJ 1661/05 *Gaza Coast Regional Council v. Israeli Knesset* (2005). The court, in a majority of 10 to 1. stated that (Paragraph 76, unofficial translation):

> *"This Court has established in a long series of judgments that Judea, Samaria, and the Gaza Strip are subject to the belligerent occupation of the State. They are not part of the State of Israel."*

48. In recent years, there have been a few legislative initiatives to annex the West Bank or parts of it to the State of Israel, thus making its territory or parts of it Israeli sovereign territory under Israeli law. At the time of this report, none of those initiatives has made it through the legislative process.

49. **In light of the above, it is my conclusion that the West Bank (except east Jerusalem) is not considered sovereign territory of the State of Israel under Israeli law, but that, under Israeli law, the West Bank is either a disputed territory to which the State of Israel makes claims and/or an occupied territory that is held according to the laws of belligerent occupation.**

50. I affirm this affidavit in support of the Applicant's application for judicial review and for no improper or other purpose.

SWORN OR AFFIRMED before me in Tel-Aviv, Israel this 16 day of February, 2018)

Sophia Brodsky)

Sophia Brodsky, Member of the Israeli Bar Association

Michael Sfard

סופיה ברודסקי, עו"ד
מ.ר. 76497
דוד חכמי 12, ת"א
טל: 03-6206947

Court File Number: T-1620-17

Between:

Dr. David Kattenburg

Applicant

And

The Attorney General of Canada

Respondent

Certificate for Code of Conduct of Expert Witness

I, Michael Sfard, having been named as an expert witness by the Applicant, Dr. David Kattenburg, certify that I have read the Code of Conduct for Expert Witnesses set out in the schedule to the *Federal Courts Rules* and agree to be bound by it.

February 18, 2018

Michael Sfard

THIS IS **EXHIBIT "A"**

TO THE AFFIDAVIT OF MICHAEL SFARD

AFFIRMED BEFORE ME ON FEBRUARY __, 2018

סופיה ברודסקי, עו"ד
מ.ר 76497
דוד חכמי 12, ת"א
טל: 03-6206947

Sophia Brodsky

Sophia Brodsky, Member of the Israeli Bar Association

MICHAEL SFARD

PERSONAL INFORMATION

Birth date and place: 21.4.1972, Jerusalem

Nationality: Israeli

Married + 2

EDUCATION

September 2000 – September 2001	–	**LL.M. (Master of Laws) in International Human Rights Law, University College of London (UCL), Faculty of Law.**
October 1993 – February 1998	–	**LL.B. (Bachelor of Law), The Hebrew University of Jerusalem, Faculty of Law**
November 1993 – March 1994	–	**Course for instructors of Arab-Jewish groups meetings, Neve-Shalom School of Peace**
July 1990		**Graduation, Rene-Kassin High School, Jerusalem**

PROFESSIONAL EXPERTISE:

Field of expertise: International human rights law, international humanitarian law, Israeli administrative and constitutional Law.

Credentials and Professional training: LL.M. in International protection of Human Rights; Legal internship as required by the Israeli Bar Association;

Professional Positions: Legal advisor to: Yesh-Din: Volunteers for Human Rights; Peace Now; Breaking the Silence; Comet-Middle East; Human Rights Defenders Fund;

PROFESSIONAL EXPERIENCE

February 2004 – Present	–	**LAWYER, MICHAEL SFARD LAW OFFICE** Specializes in litigation of Human right cases on behalf of Human Rights and

peace NGO's, communities and activists. Main field of expertise: International Human Rights Law, Humanitarian Law and Laws of Occupation.

Among the cases litigated: Legal challenges to the construction of the Separation Wall (On behalf of ACRI, HaMoked, The village of Bil'in); Legal action against construction of Israeli settlements in the West Bank (on behalf of Peace Now's "settlement Watch" program and the Israeli human rights organization Yesh Din); Representation and legal counseling to Humanitarian NGOs; Challenging impunity in the IDF (On behalf of International and Palestinian victims and NGOs such as Yesh Din and Yesh-Gvul); representation of conscientious objectors to military service; Litigation of High Court of Justice petition against the legality of the Israeli policy of assassinations and representation of HR defenders.

December 2001 – February 2004; June 1999 - July 2000;

LAWYER, AVIGDOR FELDMAN LAW OFFICE

Litigation in criminal and human rights cases mainly in the Tel-Aviv district court and the Israeli Supreme Court.

October 2001 – December 2001

MONITORING HUMAN RIGHTS, THE PUBLIC COMMITTEE AGAINST TORTURE IN ISRAEL (PCATI)

Authored an extensive legal section of a report on the Israeli policy of assassinations, later to be the base for the high court petition on the subject.

March 1998 – March 1999

INTERNSHIP, AVIGDOR FELDMAN LAW OFFICE

A year of training, as demanded by the Israeli bar association.

February 1995 – March 1998

LEGAL CORRESPONDENT, KOL HA'IR WEEKLY

'Kol Ha'ir' weekly newspaper was based in Jerusalem and has formed a part of the 'Haaretz' chain of newspapers. Reporting of pending cases and decisions given in the Jerusalem area courts (including the Supreme Court), and commentaries on High Court of Justice decisions.

August 1994 – 1996

LECTURER, THE ASSOCIATION FOR CIVIL RIGHTS IN ISRAEL (ACRI)

Lectures to teachers, university students and policemen on different human rights topics. During the 1995-1996 academic year taught a course to first year students of education of the David Yalin college in Jerusalem on behalf of the ACRI. The Course title was: "Human Rights in the Israeli Reality".

April 1994 – February 1995

RESEARCHER, THE ISRAELI EDUCATIONAL TELEVISION

Member of the production team of the weekend (Friday) edition of "Erev Chadash" daily program.

Teaching posts:

2017-2018, 2014-2015	**College of management, Faculty of Law – Emille Zola Chair for Human Rights**, Course lecturer, "*Litigating Human Rights: Advantages, Disadvantages and Dilemmas*" – (for LL.M. in Human Rights Law program students)
2012-2014	**College of Management, Emil Zola Chair for Human Rights**, Research group instructor *"evolving legal status of Human Rights Defenders"* (together with Professor Orna Ben-Naftali) - (for LL.M. in Human Rights Law program students)
2005	**College of management, Faculty of Law**, Course lecturer, "*Internalization of International Law? Israel and the Occupied Territories"* (together with Dr. Amichai Cohen)
2004-2005	**College of Law and Business, Ramat-Gan**, Course lecturer, *"International human Rights Law"*

PRIZES AND AWARDS

October 2014 – December 2016	– **Open Society Fellowship:** A Grant Given by the Open Society Foundations "to support individuals pursuing innovative and unconventional approaches to fundamental open society challenges". During the fellowship wrote a book that examines the last four decades of human rights litigation in Israel on issues related to the Occupied Palestinian Territories.
June 2013	**Emille Grintzweig Human Rights Award for 2012**: awarded by the Association for Civil Rights in Israel to "an individual or NGO that has made a unique contribution to the advancement of human rights in Israel"

MEMBERSHIPS