

**COMMISSION OF INQUIRY INTO THE DECLINE OF SOCKEYE SALMON IN THE  
FRASER RIVER**

In the matter of Her Excellency the Governor General in Council, on the recommendation of the Prime Minister, directing that a commission do issue under Part I of the *Inquiries Act* and under the Great Seal of Canada appointing the Honourable Bruce Cohen as Commissioner to conduct an inquiry into the decline of sockeye salmon in the Fraser River.

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**AFFIDAVIT OF OTTO E. LANGER  
ON BEHALF OF THE CONSERVATION COALITION**

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I, Otto Emil Langer, fish biologist and aquatic ecologist, of the City of Richmond, in the Province of British Columbia, SWEAR THAT:

1. I have personal knowledge of the facts and matters set out herein, except where those facts are stated to be based on information and belief, in which case I believe them to be true.
2. I have read the ruling of Commissioner Cohen dated September 12, 2011, and swear the following evidence in response.

**Relevant Employment Experience**

3. In October 1969, I began employment with the Department of Fisheries and Oceans (also variously called: Canada Department of Fisheries; Fisheries and Forestry, Environment Canada – Fisheries Service; Canada Department of Fisheries and Oceans; and Fisheries and Oceans Canada – all hereinafter referred to as “DFO”) and worked as a physical habitat protection biologist from 1969 to 1972. Starting in 1972, I oversaw a new water quality group within DFO, which continued until 1976, when I transferred out of DFO to Environment Canada (hereinafter “DOE”). In 1983, I transferred back to DFO.

4. Jurisdiction over section 36 of the *Fisheries Act* (numbered section 33 until changed to section 36 in 1990) was transferred from DFO to DOE in late 1971. In 1972, I was assigned to liaise between DFO and DOE, and thereby facilitate the effective transference of water quality and pollution matters generally, and section 36 of the *Fisheries Act* in particular.
5. In this capacity, and from 1972 to 1976, I communicated frequently with both DOE staff and Department of Justice prosecutors regarding issues related to section 36, including respecting the role that DFO would retain in water quality and pollution matters. During this time, I also provided expert evidence at multiple court cases respecting such matters.
6. From 1976 until 1983, I worked for DOE and oversaw the Environment Canada - Environmental Protection Service (hereinafter "DOE – EPS") Freshwater Studies and Contaminants Control program. In this position, I worked and collaborated extensively with DFO water quality staff, fishery Officers and DOJ lawyers. During this time, I estimate that approximately 60% of this time was spent in water quality and habitat compliance matters respecting enforcement and compliance of section 36, though the time commitment to such matters varied from year to year.
7. From 1983 until 1990, I was the head of habitat management in DFO for the Fraser River, Northern BC and Yukon Area. From 1990 to 1997, I directed various aspects of the Fraser River Action Plan including developing the program, directing habitat "No Net Loss" assessments, as well as urban stream planning and mapping. From 1997 to 2002 I was the Chief of Habitat Assessment and Land Stewardship. From 2002 – 2006, I established and directed the David Suzuki Foundation's Marine Conservation Group. I retired in 2006, but continue to have extensive involvement in fisheries and habitat issues, mostly on a volunteer basis.

#### **Enumeration of Economic Opportunity First Nations' Fishery**

8. I have no direct knowledge or experience with respect to the enumeration of fish related to any fishery, including the First Nations economic opportunity fishery.

#### **Contextual Background of the Split from DFO to DOE of Section 36 of the *Fisheries Act***

9. Prior to 1971, the then Canada Department of Fisheries (also variously called Fisheries and Forestry, Environment Canada – Fisheries Service and eventually the Canada Department of Fisheries and Oceans or Fisheries and Oceans Canada – all herein referred to as "DFO") oversaw all provisions of the *Fisheries Act* related to both water quality and pollution. Physical habitat protection was also under the administrative jurisdiction of DFO. I written extensively on the section 36 split, and problems associated with it, including in a document I authored entitled: *Brief to the Office of the Auditor General of Canada – Department of Fisheries and Oceans and Environment Canada's Record of Protecting Fish Habitat and Need for Improved Performance in the Face of Declining Fish Populations and Fish Habitat in B.C. and the Yukon, Canada*. An

excerpt of this document – specifically, the portion of this document dealing with the section 36 split, is attached as Exhibit “A” to this my affidavit.

10. In 1971, the government of Prime Minister P.E. Trudeau established Environment Canada which incorporated DFO into it, and made DFO a Fisheries Service under a single and larger new department. Later, Environment Canada was split into two, and DFO was re-established as a stand-alone ministry.
11. As part of this split of DOE and DFO, it was specified that DOE should retain a mandate related to water quality and pollution control, so as to compliment having been given jurisdiction over Inland Waters (measured water flows, conducted water quality studies and published water quality objectives). The senior managers in the two departments were given the task of delegating administration over section 36 to the DOE Minister. Despite that, the DFO Minister was to be ultimately responsible for the entire Act.
12. In October 1971, two Assistant Deputy Ministers (Lucus and Weir) produced the blueprint for the delegation to DOE of the administration of section 36. This so-called Lucas -Weir Memo remained the status quo until the end of my employment in 2002 and, in my understanding, continues to the present time.
13. As part of this shifting jurisdiction, the overall administration of Section 36 was given to the newly-formed DOE-EPS, and the oversight of this provision became the DOE-EPS’s main basis for existence. The transference of section 36 was greeted with great reservation by many DFO staff, with some saying it would not work and cause confusion.
14. Also important to understanding the historical context, DFO Pacific Region was originally divided into two largely autonomous branches: Northern Operations Branch – Habitat Protection (NOB-HP) or Southern Operations Branch – Habitat Protection (SOB-HP). Soon after section 36 was transferred from DFO to DOE, NOB-HP took the steadfast position that their job was habitat protection and not water quality and pollution control. In contrast, SOB-HP continued to see pollution abatement as within their mandate and so continued to do water quality and pollution abatement work.

15.

[REDACTED]

16. In 1973, I was given the job to build a new SOB Water Quality unit which grew to six staff within a year. This applied fisheries water quality group became the communication link between DOE and DFO fishery biologists, as well as pollution impact and water quality experts and researchers. The group also worked with the IPSFC and provided advice on water quality issues to the new DOE-EPS. Specifically, the new SOB Water Quality Unit worked with the IPSFC and other DFO Science researchers to bring the best information to DOE-EPS, and to evaluate each project or matter involving a potential water quality concern.
17. In 1976, the division of DFO Pacific Region into NOB and SOB ended, and DFO again became a single entity. The SOB Water Quality Unit then adopted some of the NOB staff and became the primary administrator of Section 36 of the *Fisheries Act* for the entire Pacific Region.

**Direct Knowledge of Confusion Caused by the Split**

18. [REDACTED]

19. [REDACTED]

20. [REDACTED]

[REDACTED]

21.

[REDACTED]

22.

[REDACTED]

23.

[REDACTED]

24.

[REDACTED]

25.

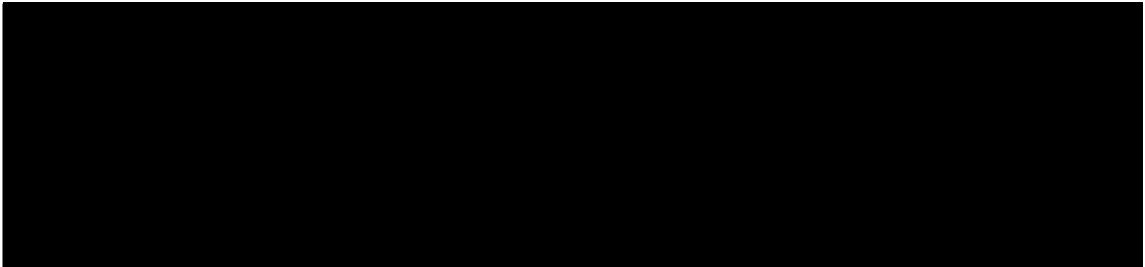
[REDACTED]

26. In 1972 – 1976, when DOE took over responsibility of the pollution provisions of the *Fisheries Act*, they had about 70 staff focused on the administration of section 36. For its part, DFO had approximately six water quality staff and three staff working in the joint DOE-DFO lab. Further,

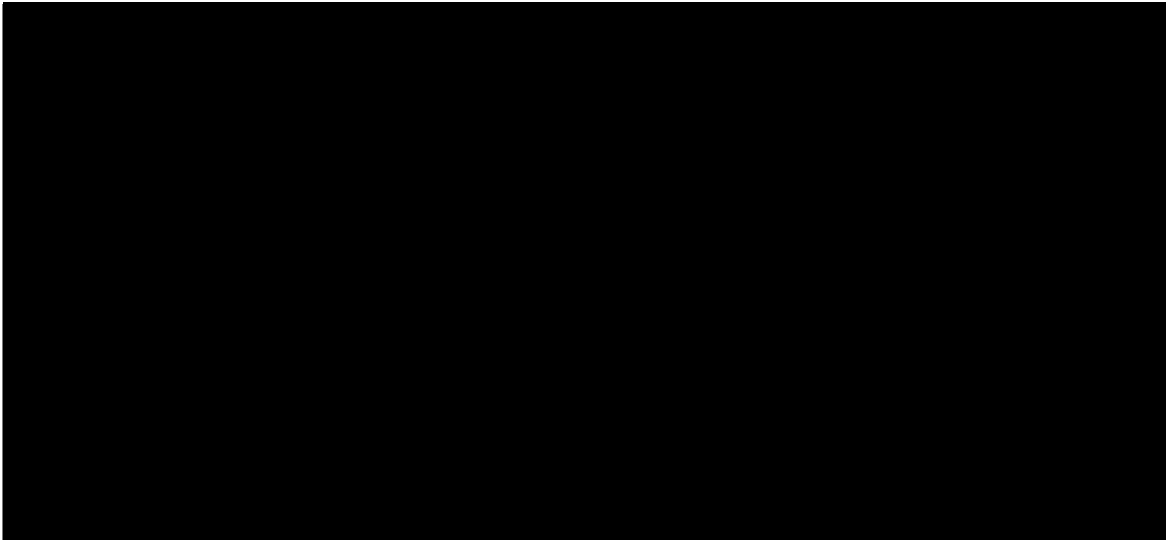
the IPSFC had approximately five staff directly involved in Fraser River water quality issues. These staff directly administered or supported the application of the Section 36 provisions of the *Fisheries Act*. Additionally, some staff at DFO Science Branch continued doing research related to water quality and pollution impact issues such as Drs. Rogers and Birtwell. DOE reorganized over the years and DOE-EPS was replaced with other monikers, though staff dedicated to Section 36 administration remained about the same until about the year 2000. By the late 1990s, DOE began to hire uniformed staff for enforcement work.

**Direct Knowledge of Examples of Confusion Caused by Split:**

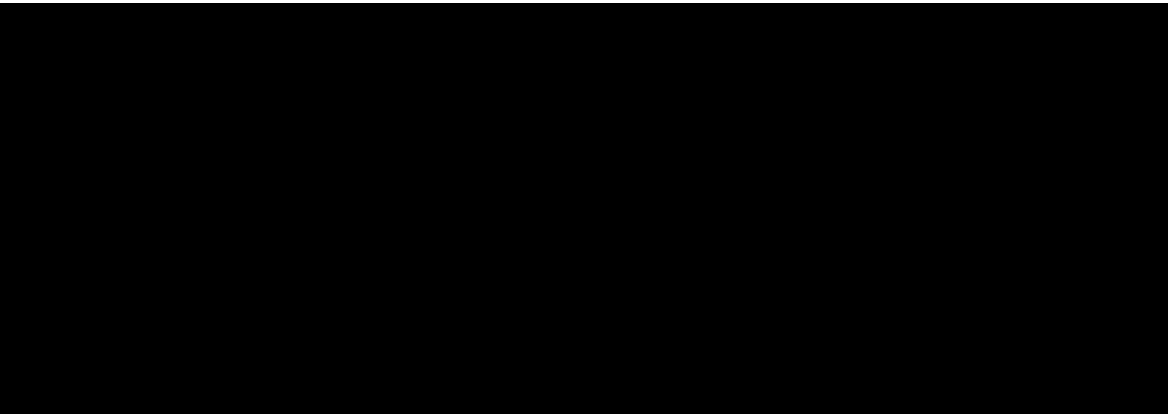
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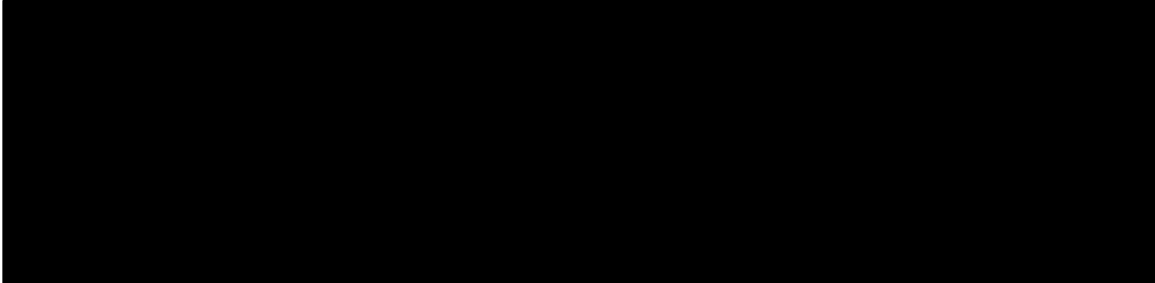
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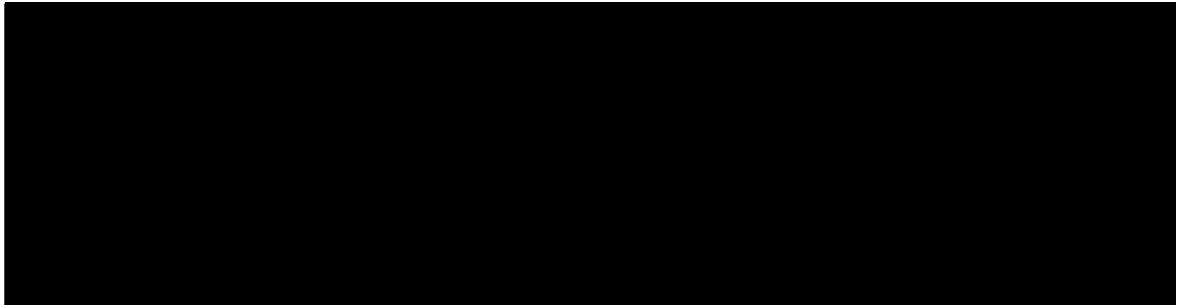
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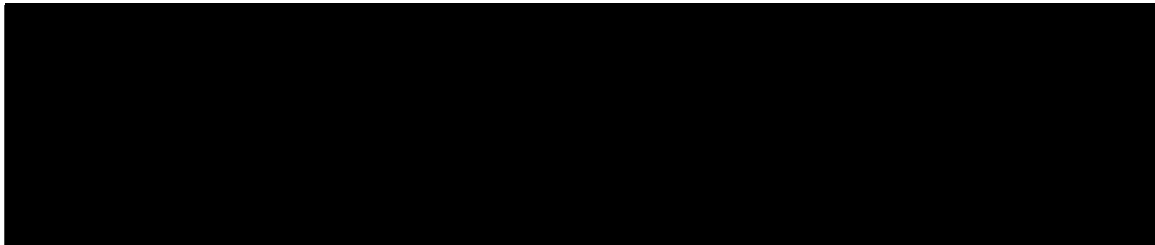
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33. I have no useful and direct knowledge regarding the use of section 42 of the *Fisheries Act*.

#### Conclusion

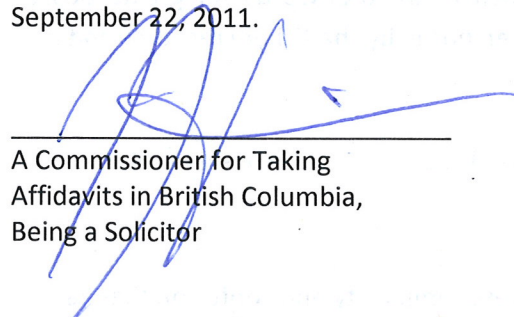
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35. If the status quo was to be altered, and section 36 was to be reverted back to DFO, strong direction, leadership and support from senior management would be required. Many re-organizations of government activities have taken place over the years; for instance, in the 1990s the *Navigable Waters Protection Act* and Coast Guard were both transferred to DFO and, later, this Act was transferred to the Ministry of Transportation. Thus, this change can be implemented, so long as there was sufficient political will.

36. In my opinion, should it be decided, the cost of reverting DOE section 36 staff to DFO would not be costly. In Pacific Region they presently share office space, services would not change and, indeed, some consolidation could occur and savings would result. For instance, such a consolidation could result in a reduction of the number of higher level managers and result in an amalgamation of habitat and water quality enforcement staff, thus allowing more efficient and less costly administration of the Act. The situation, however, may not apply in National Head Quarters or in other regions of Canada.
37. The science expertise on fish and the impacts of pollution has remained in DFO, and DFO has the more experienced enforcement staff. It only makes sense that those DOE technicians, biologists and engineers that should be part of that coordinated pollution effort be located in one organization with the science and enforcement backup and related directly to the complimentary habitat protection provisions of the Fisheries Act (Section 35) on a daily basis where they must be administered jointly. The confusion on who does what must be avoided in that there is a strong public will to see a more effective and accountable program to protect fish, water quality and fish habitat. Since 1971, the split of administering section 36 has neither worked for the administering agencies, nor for fish and their habitat.

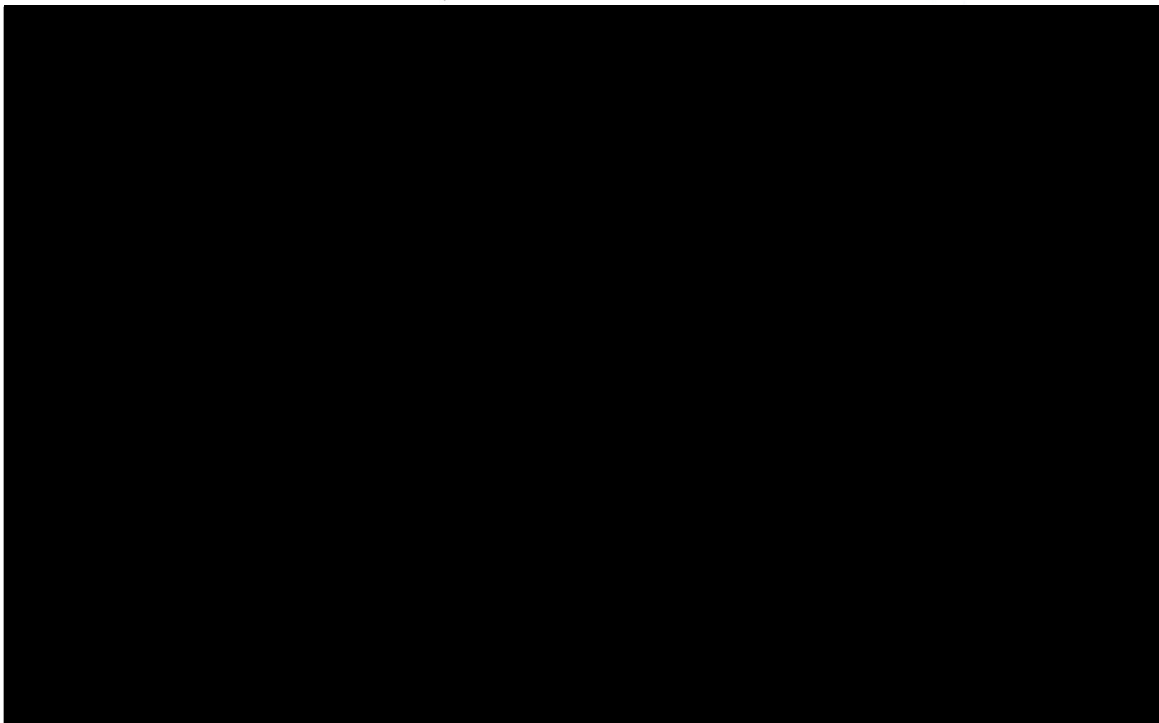
SWORN BEFORE ME  
at Richmond, British Columbia, on  
September 22, 2011.

  
A Commissioner for Taking  
Affidavits in British Columbia,  
Being a Solicitor

  
Otto Emil Langer

  
214-131 WATER STREET  
VANCOUVER, B.C. V6B 4M3  
Ph. 604-685-5618 Fax. 604-685-7813

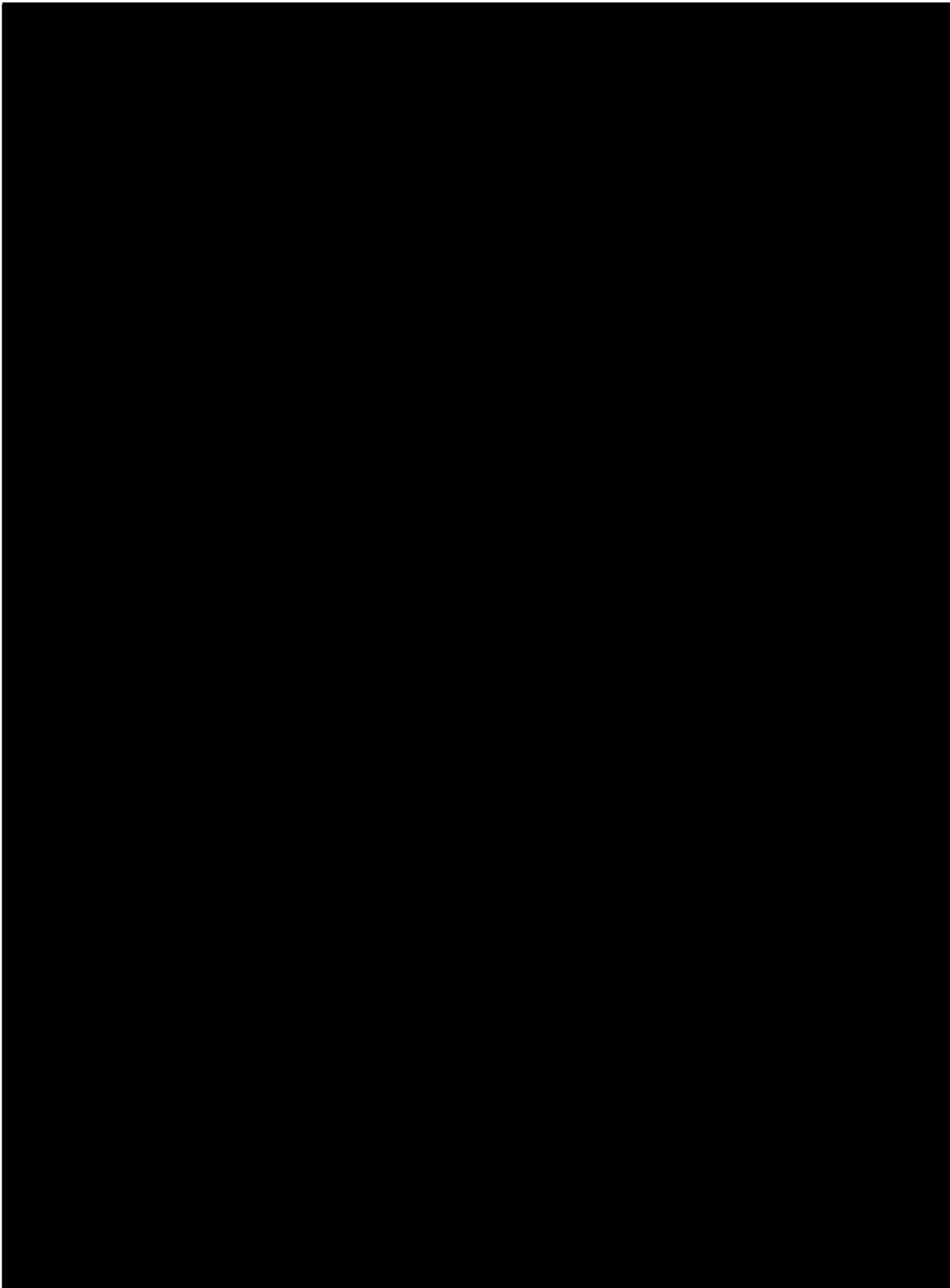


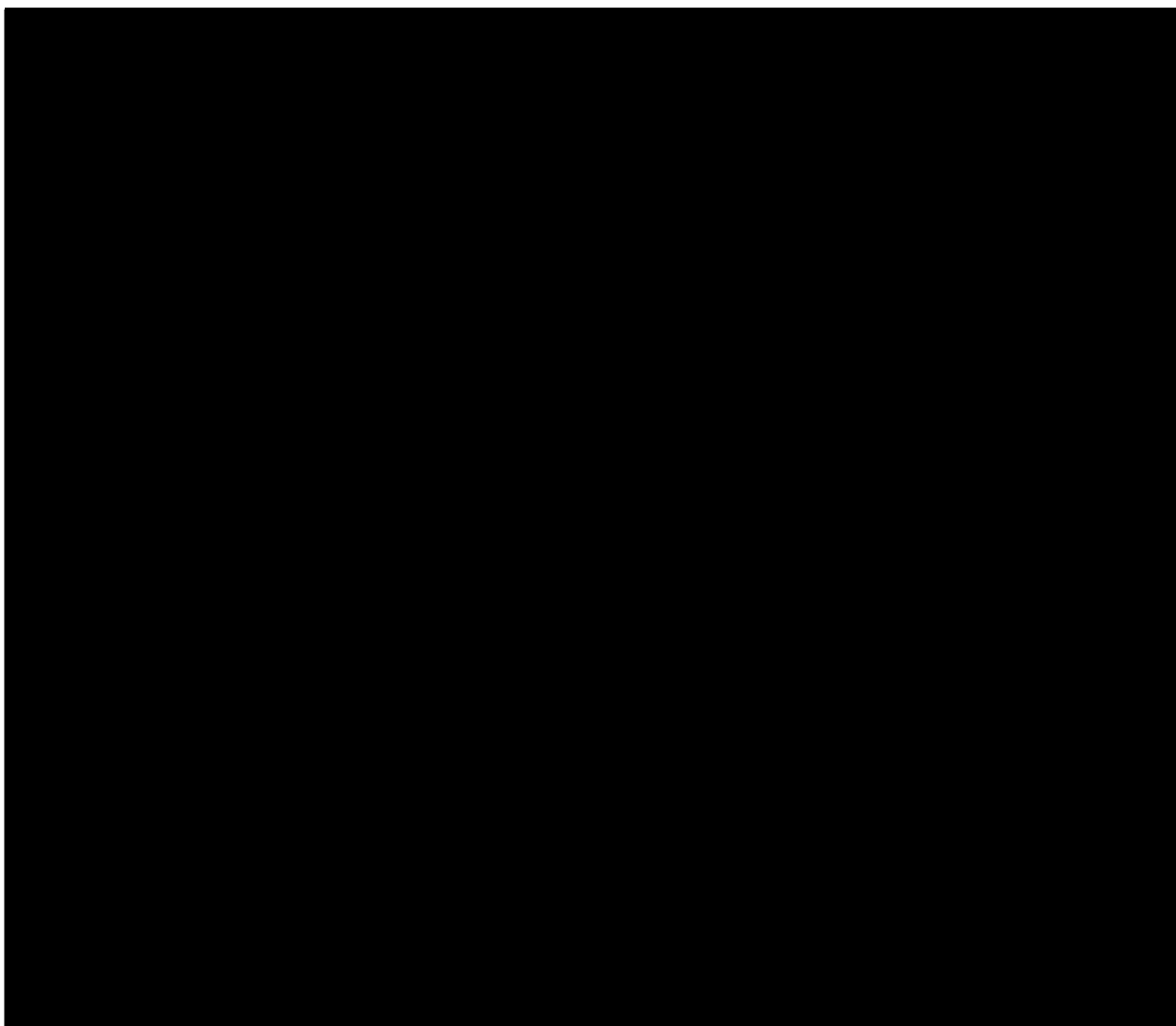


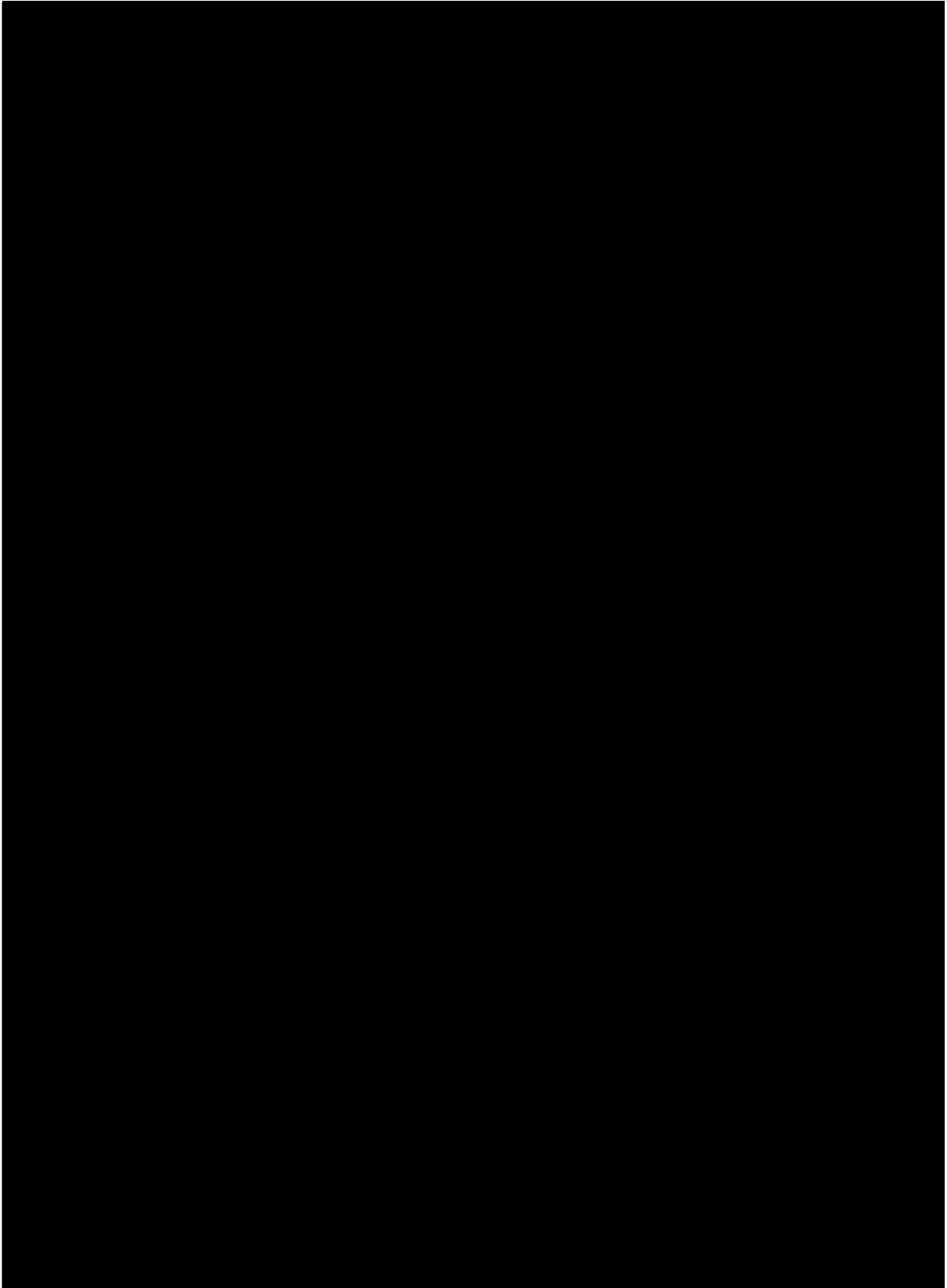
This is Exhibit "A" referred to in the  
affidavit of ..... OTTO EMIL LANGER .....  
sworn before me at ..... RICHMOND, BC .....  
this ..... 22<sup>nd</sup> ..... day of ..... Sept. .... 20 11 .....

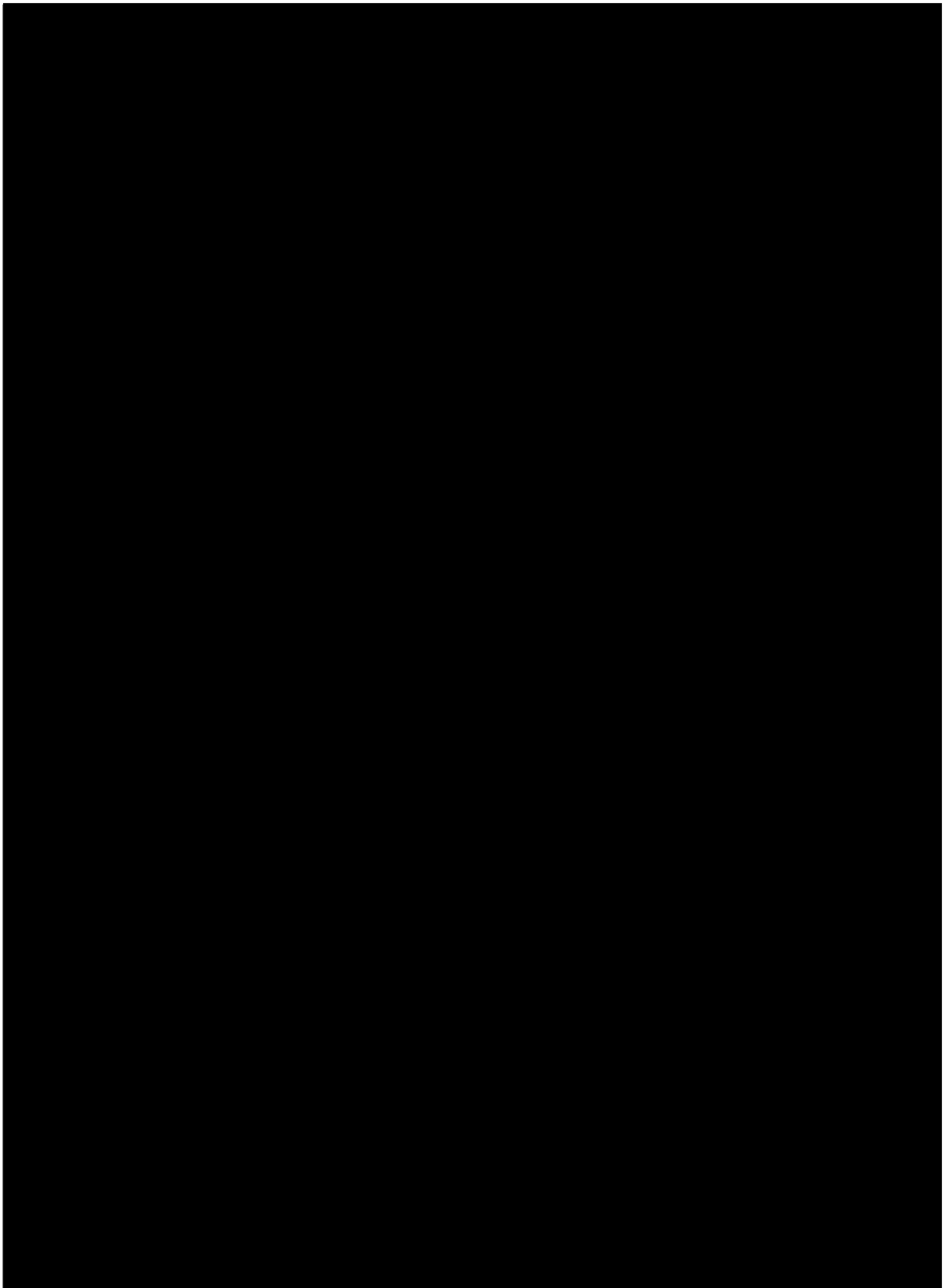
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A Commissioner for taking Affidavits  
within British Columbia

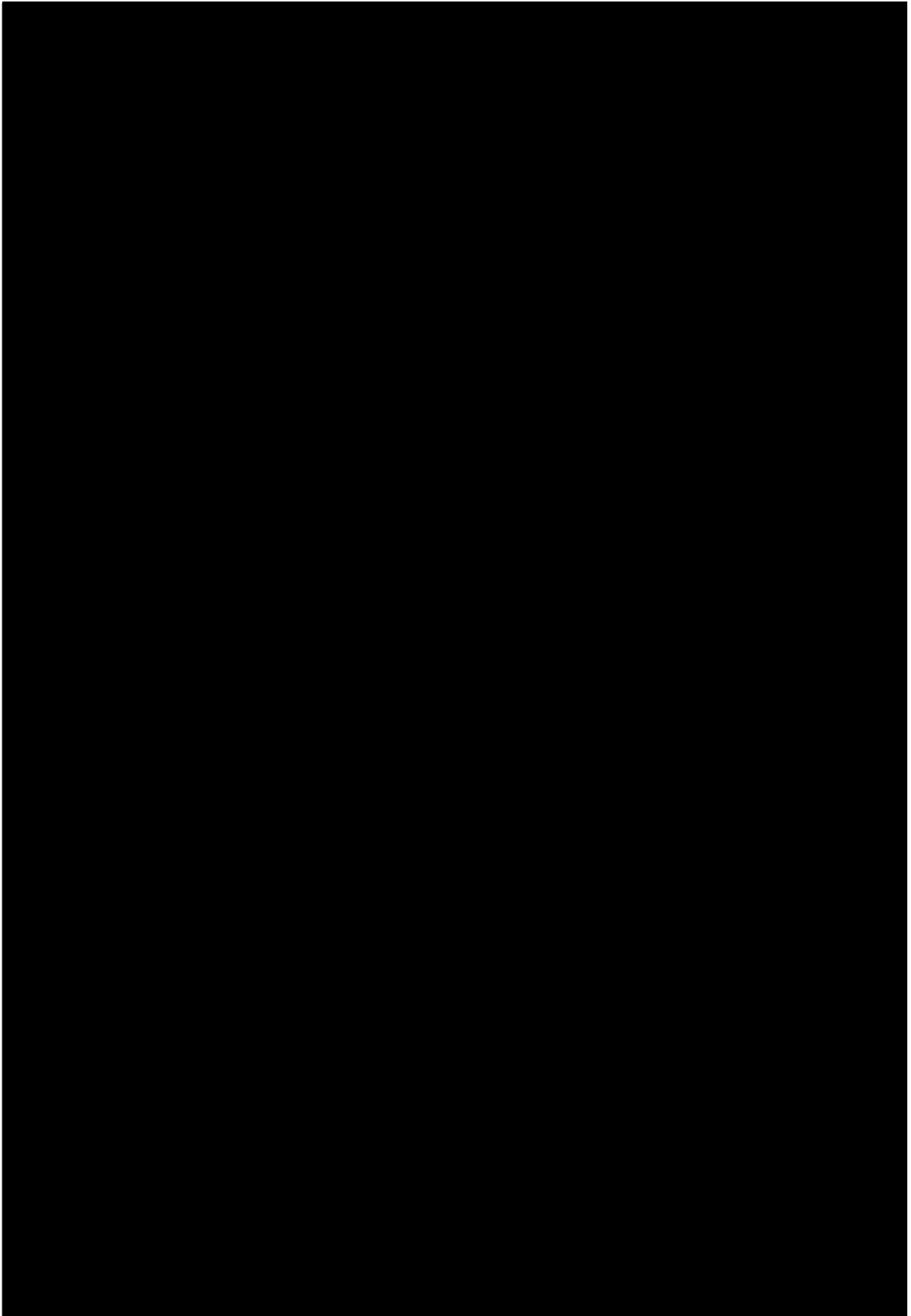


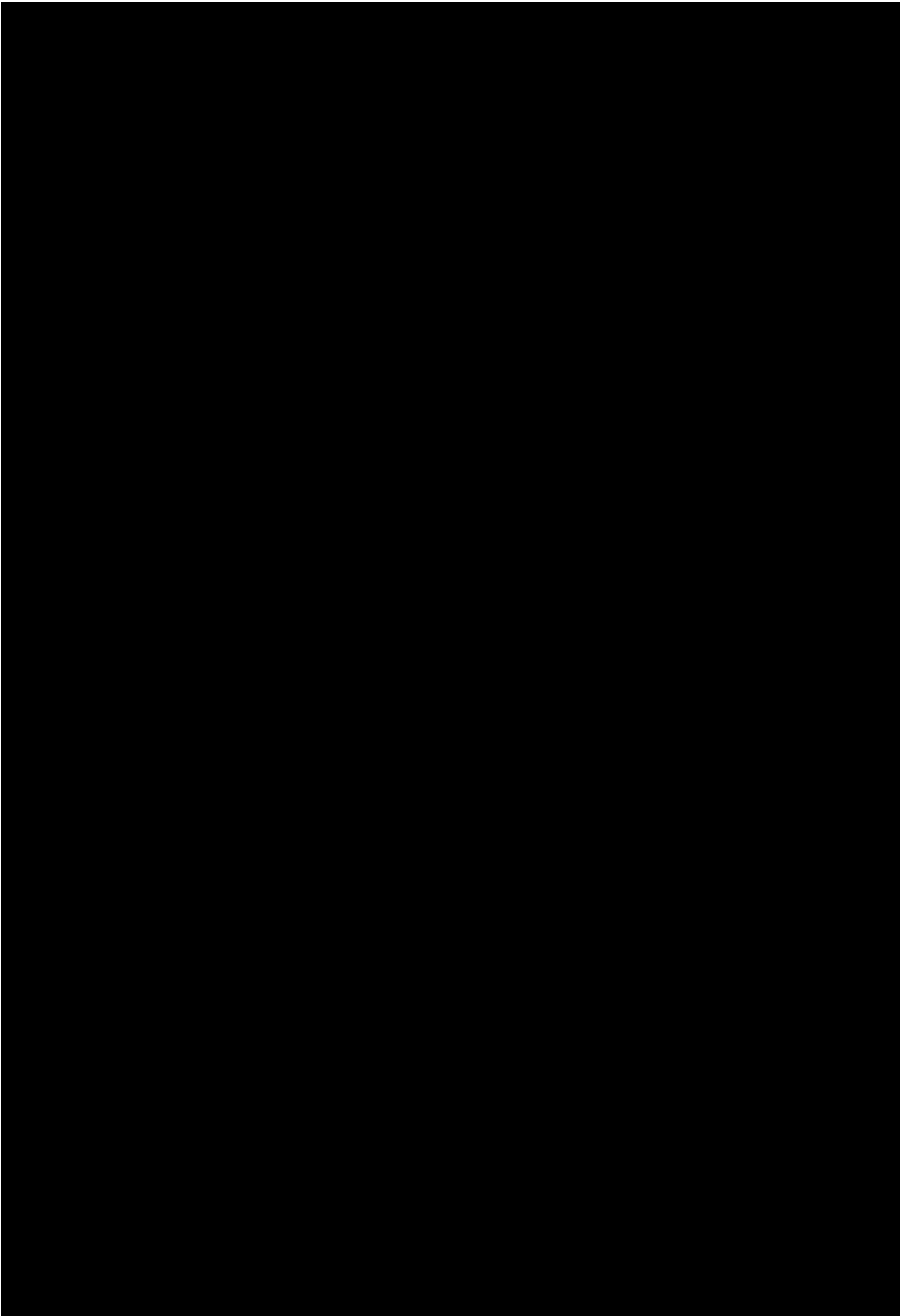


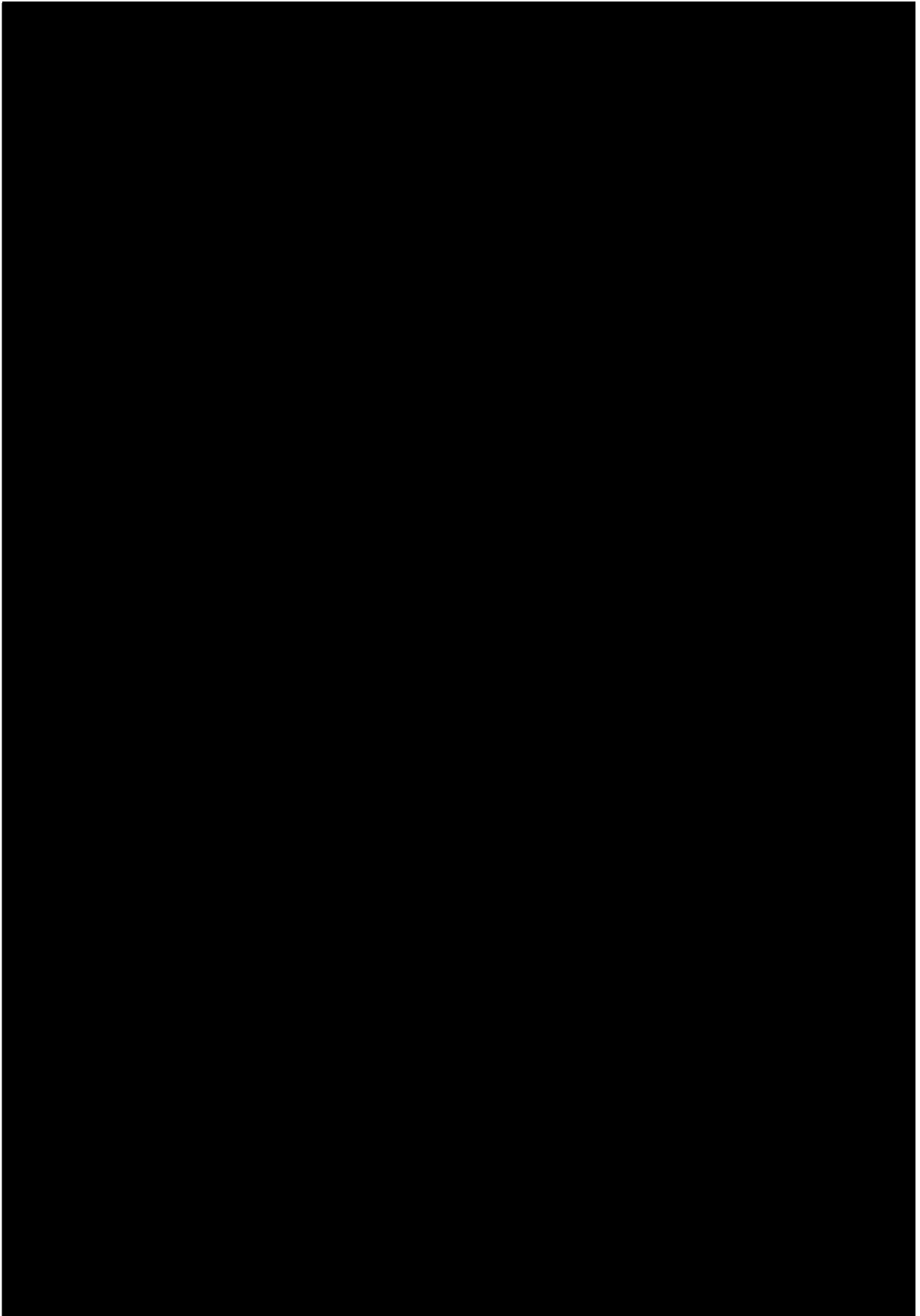




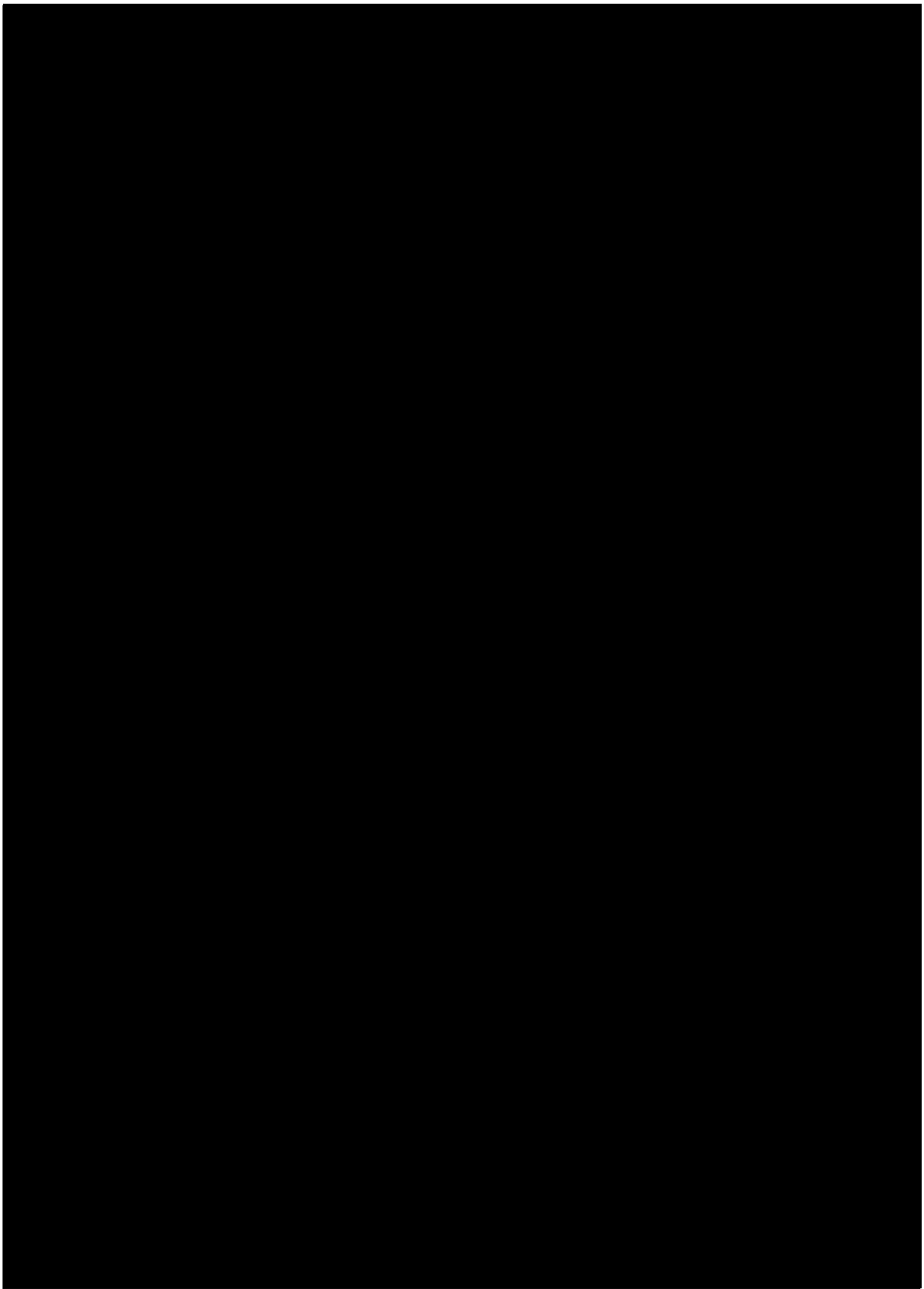


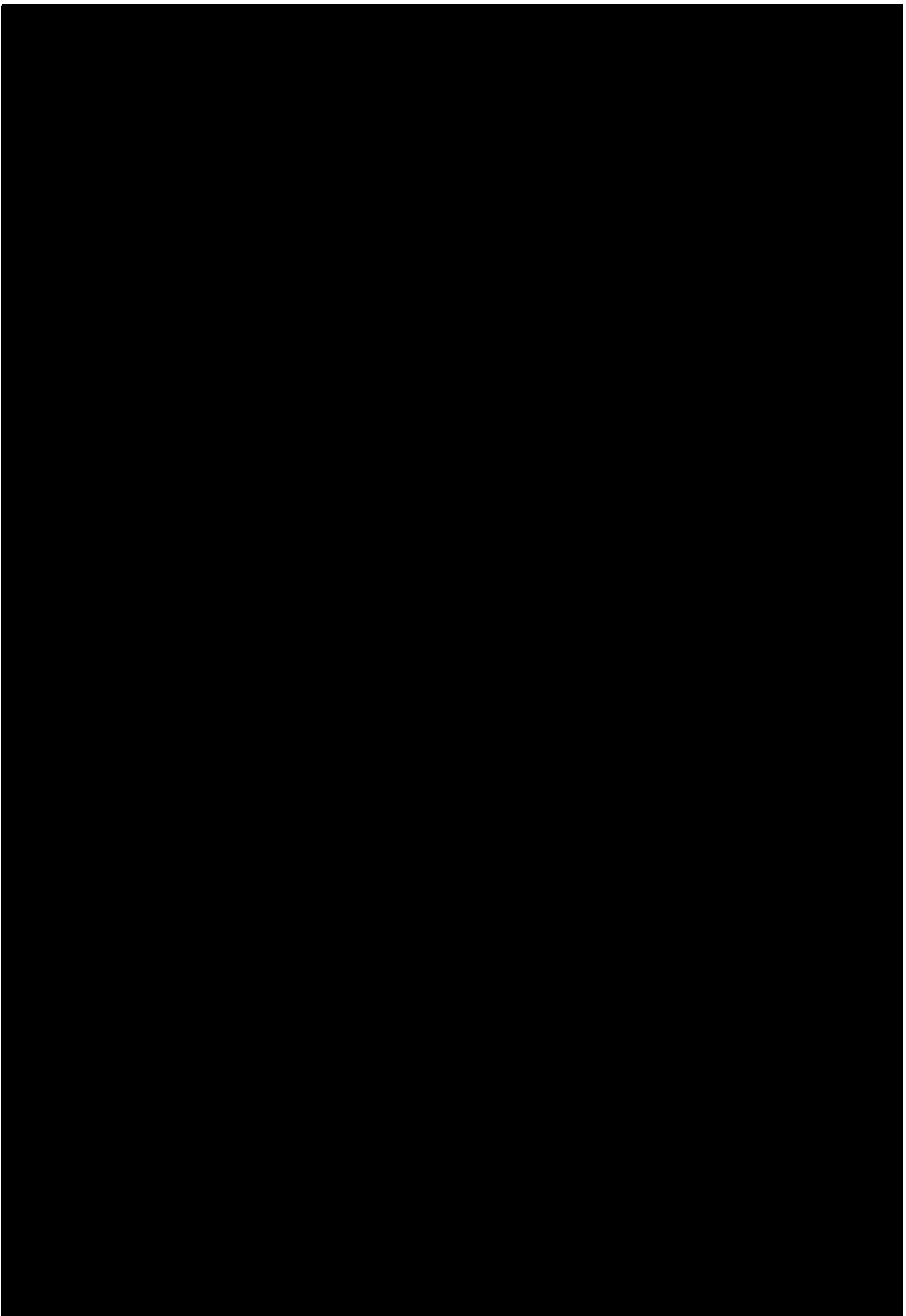


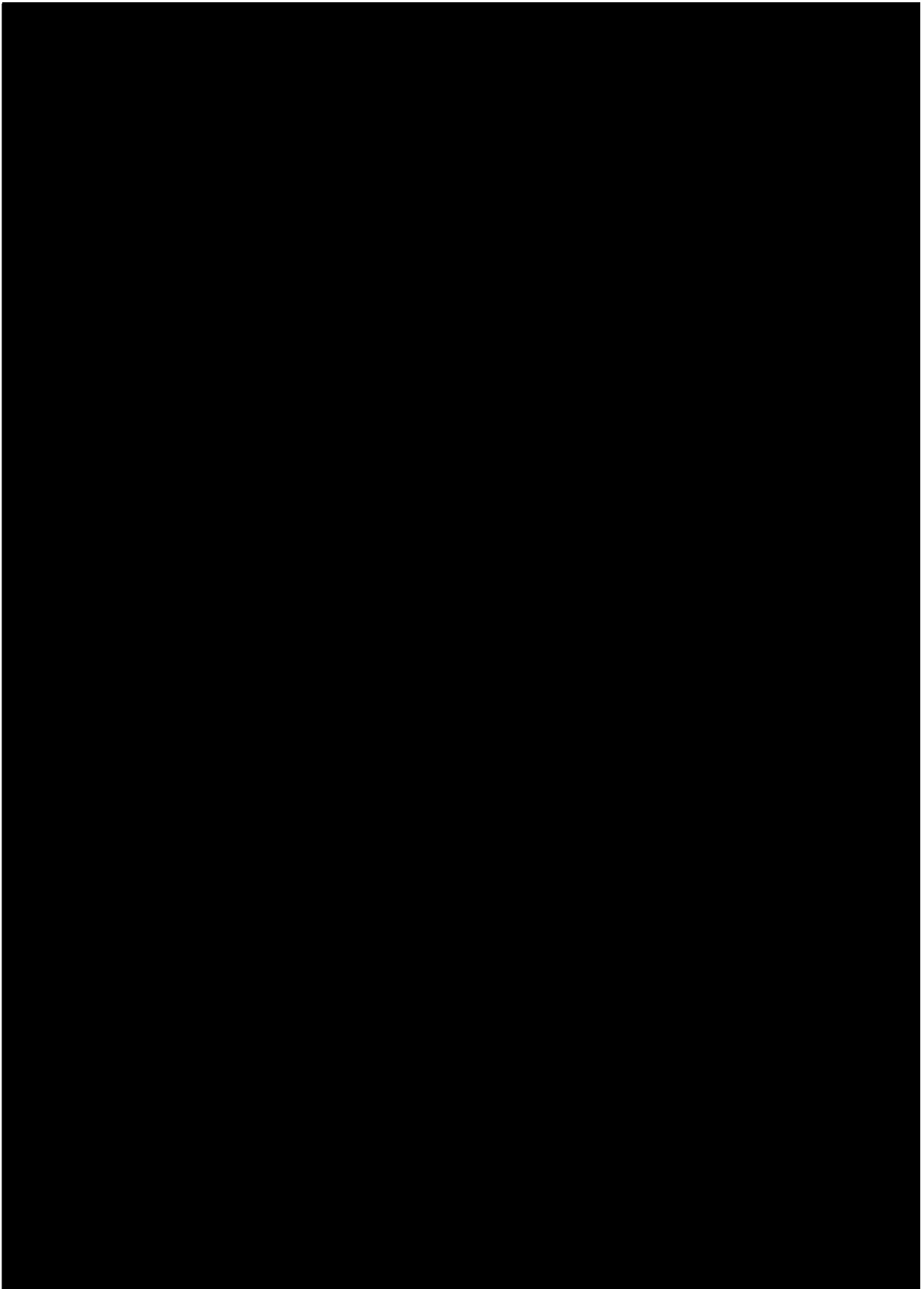


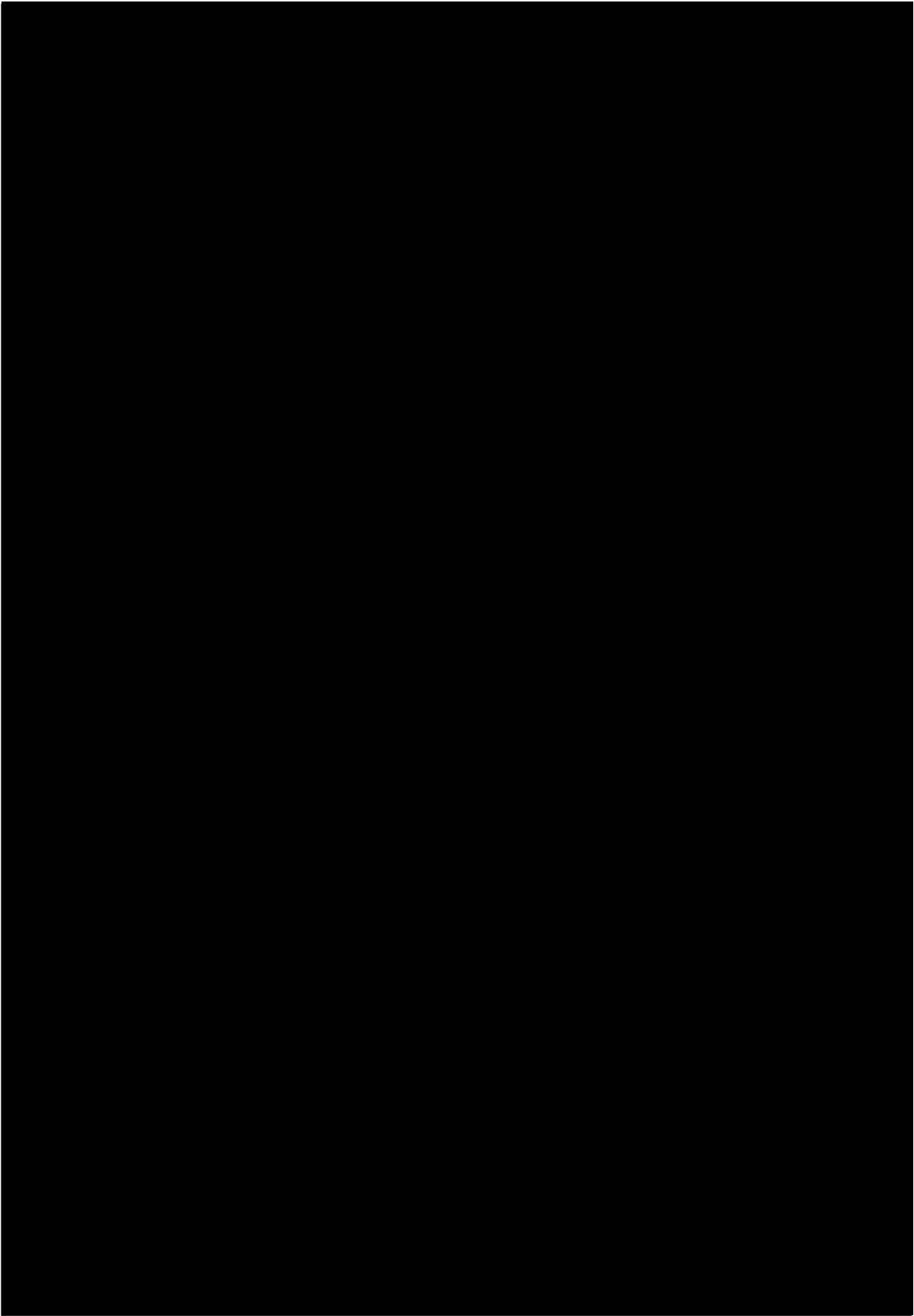


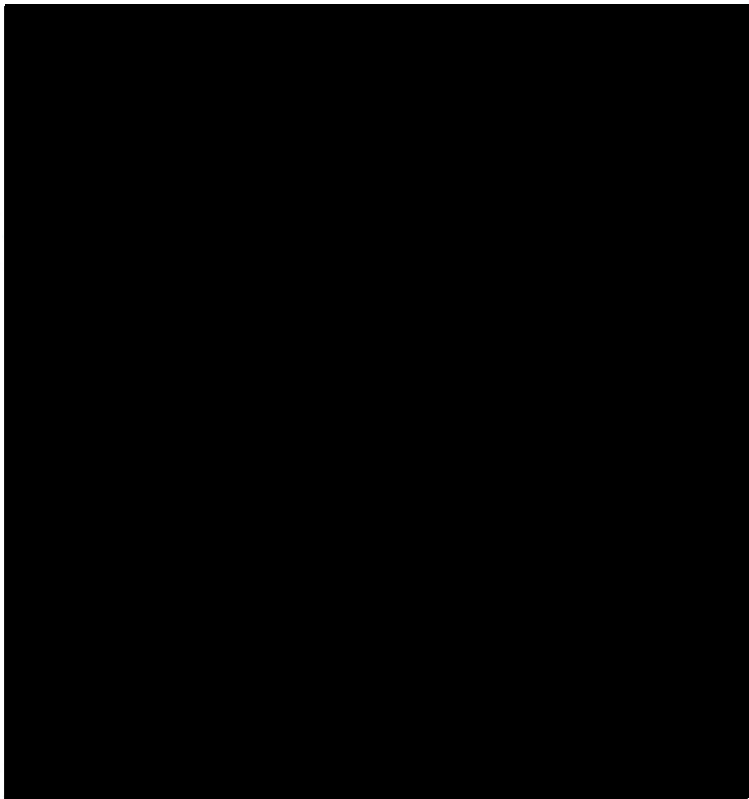












This is Exhibit "B" referred to in the  
affidavit of OTTO EML LANKER  
sworn before me at RICHMOND, BC  
this 22<sup>nd</sup> day of Sept 20 11

.....  
A Commissioner for taking Affidavits  
within British Columbia

