

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

GILLIAN FRANK AND JAMIE DUONG

Applicants
(Respondents)

- and -

ATTORNEY GENERAL OF CANADA

Respondent
(Appellant)

**MEMORANDUM OF ARGUMENT BY THE ATTORNEY GENERAL OF
CANADA IN RESPONSE TO AN APPLICATION FOR LEAVE TO APPEAL**
(Pursuant to R. 27 of the *Rules of the Supreme Court of Canada*)

**Counsel for the Respondent, the
Attorney General of Canada**

Department of Justice Canada
Ontario Regional Office
The Exchange Tower
130 King Street West
Suite 3400, Box 36
Toronto, Ontario
M5X 1K6

Per: Peter Southey, Gail Sinclair
and Peter Hajecek
Tel: (416) 973-2240/ 954-8109/
973-9305
Fax: (416) 973-0809
Email: peter.southey@justice.gc.ca

**Agent for the Respondent, the
Attorney General of Canada**

William F. Pentney, Q.C.
Deputy Attorney General of Canada
East Memorial Building
284 Wellington Street
Ottawa, Ontario
K1A 0H8

Per: Christopher Rupar
Tel. No.: (613) 941-2351
Fax No.: (613) 954-1929
Email: chris.rupar@justice.gc.ca

Counsel for the Applicants,
Gillian Frank and Jamie Duong

Agent for the Applicants,
Gillian Frank and Jamie Duong

Cavalluzzo Shilton McIntyre
Cornish LLP
Barristers & Solicitors
474 Bathurst Street, Suite 300
Toronto, Ontario
M5T 2S6

Per: Shaun O'Brien and
Amanda Darrach
Tel. (416) 964-1115
Fax: (416) 964-5895
E-mail [sobrien@cavalluzzo.com/](mailto:sobrien@cavalluzzo.com)
adarrach@cavalluzzo.com

TABLE OF CONTENTS

PART I – STATEMENT OF FACTS	1
A. Overview.....	1
B. Facts	2
1) The Challenge.....	2
2) The Statutory Scheme at Issue	3
3) Decisions below	5
4) Legislative history on the long-established fundamental connection between voting and residence.....	6
PART II – QUESTION IN ISSUE.....	7
PART III – STATEMENT OF ARGUMENT	8
PART IV – COSTS	15
PART V – NATURE OF ORDER SOUGHT	15
PART VI – TABLE OF AUTHORITIES.....	16
PART VII – STATUTES RELIED ON.....	17

PART I – STATEMENT OF FACTS

A. OVERVIEW

1. The majority decision of the Ontario Court of Appeal applied this Court's settled jurisprudence to affirm a limit to the right to vote which protects the most essential feature of Canada's constitutional democracy – that every citizen exercising the right to vote equally bears the responsibility and obligation to obey the laws enacted by elected officials. Residence limits exist in provincial and territorial laws and have been upheld as constitutionally valid. The laws of other countries including those with Westminster parliamentary systems, have non-resident voting limits and those limits have been found to be justified in the jurisprudence of the European Court of Human Rights. The majority decision of the appellate court below merely applied existing jurisprudence of this Court on both the right to vote and the proper analytical approach to section 1 justification. The decision raises no issue of public importance that has not already been fully answered by this Court.

2. Long-term non-resident Canadian citizens (other than those in service to Canada abroad) have never had the statutory right to vote in a federal election. In 1981, the framers of the Constitution viewed residence in Canada as a necessary and justified limit to a citizen's right to vote. The residence limit is the logical corollary of what this Court recognized as the essential connection "at the heart of Canada's "constitutional democracy".¹ Long-term non-residents do not bear the same responsibilities and consequences of being governed by a duly elected Canadian government as resident Canadian citizens. Their day-to-day life is not governed by Canadian laws -- very few of which have any extra-territorial application. The right to vote of the long-term non-resident is therefore justifiably suspended until they resume Canadian residence.

¹ *Sauvé v. Canada (Chief Electoral Officer)*, 2002 SCC 68, [2002] 3 S.C.R. 519, at para. 31 ("Sauvé No. 2")

3. The Ontario Court of Appeal properly rejected the applicants' argument that Parliament's 1993 extension of voting rights to temporarily non-resident citizens took away existing voting rights of long-term non-residents. Long-term non-residents have never had voting rights. The 1993 law extended voting rights, but only to those non-resident citizens who had an ongoing intention to resume residence in Canada and who were away for less than 5 continuous years. Those temporary non-residents predictably return to resume the responsibilities that are the corollary of the voting right. The majority also properly rejected the applicants' suggestion that a citizen's choice to be a long-term non-resident was analogous to the now repudiated subjective limits to voting such as gender, property ownership or status as a prison inmate. Unlike those limits, long-term non-residence is an objective limit to voting that has nothing to do with worthiness, but is based on geography. It ends as soon as the long-term non-resident chooses to resume residence in Canada.

4. By limiting postal voting to citizens only temporarily resident outside Canada, Parliament preserves what this Court has described as the essential feature of this country's democratic system – the reciprocal obligations that must follow the exercise of the right to vote. The decision of the appellate court below therefore raises no issue of public interest that this Court has not already answered.

B. FACTS

1) The Challenge

5. The applicants, Gillian Frank and Jamie Duong, are both long term non-resident citizens of Canada. They have been living and working in the United States for over a decade. Their application in the Ontario Superior Court of Justice was the first case to challenge the statutory words of limitation in the

Canada Elections Act (“CEA”)² found in Parliament’s 1993 extension of postal voting rights to citizens only temporarily resident outside Canada.

6. By challenging these words of limitation found in this extension of voting rights, the applicants seek to make postal voting available to long-term non-residents for the first time in Canada’s history – no matter how long they have been away from Canada and regardless of whether they ever plan to return.

2) The Statutory Scheme at Issue

7. Part 1 of the *CEA*, entitled “Electoral Rights”, sets out the basic rules for voting in Canada. It defines, first, those who are qualified to vote, and, second, how qualified electors become entitled to vote.

8. Section 3 defines “qualified” electors as those who are citizens and 18 years of age or older on polling day. Age, like residence, is a statutory limit to voting that is not set out in s. 3 of the Charter.

9. Section 6 provides that every qualified elector is entitled to have his or her name included in the list of electors for the polling division in which he or she is ordinarily resident and to vote at the polling station for that division. Residence in Canada becomes a requirement of voting under this section as polling divisions only exist in this country.³ By this primary method of voting, citizens at least 18 years of age must be physically present and place their ballot in the ballot box in the polling division in the electoral district in which they reside.

10. The *Special Voting Rules* (“SVR”) in Part 11 of the *CEA* provide exceptions to this primary means of voting. The *SVR* allows electors who fall within its exceptions to vote by sending their ballot to Elections Canada by mail

² S.C. 2000, c. 9

³ *Opitz v Wrzesnewskyj*, 2012 SCC 55, 3 SCR 76, at para 11

and having their vote counted in the electoral district in which they ordinarily reside, or, in the case of non-resident electors, where they last ordinarily resided in Canada (or some other residence to which they have a close connection as prescribed in the *SVR*).

11. Section 11 of the *CEA* lists the electors who can use postal voting under the *SVR*. They include: a) members of Canada's Armed Forces; b) federal and provincial public servants serving Canada abroad; c) citizens working abroad for international organizations of which Canada is a member and to which Canada contributes, along with accompanying family members in each group who are also eligible to vote.⁴ These "external" voters are abroad in service of Canada (either directly in service, or as a family member supporting that person).

12. In 1993, Parliament enacted a fourth exception of external voter who could vote by mail under the *SVR* – citizens who are at least 18 years old, who have resided in Canada at some time in their life,⁵ but who are temporarily resident outside Canada. Parliament defined "temporary absence" to mean resident outside Canada for less than five continuous years with an ongoing intention to resume Canadian residence.

13. Electors in service of Canada and their families (the first three exceptions) are not subject to the five year limit defining temporary absence. They can continue to vote by mail under the *SVR* as long as they serve Canada abroad. However, all electors using the *SVR*'s must have an ongoing intention to resume residence in Canada.⁶

⁴ *CEA*, s. 11(a), (b) & (c) & s. 222(2)(c)

⁵ *CEA*, s. 222(1)(a)

⁶ *CEA*, s. 222(1) & (2)

3) Decisions below

Superior Court of Justice of Ontario

14. On May 2 and 15, 2014, Penny J. of the Ontario Superior Court declared invalid subsection 11(d) of the *CEA*, and the words of limitation in six provisions of the *SVR*, finding that they unjustifiably breached the applicants' s. 3 Charter rights.⁷ The words of limitation declared invalid transformed Parliament's extension of voting rights to citizens only temporarily resident outside Canada to the provision of postal voting to all non-resident citizens.

15. Penny J. refused a request for a temporary suspension of the declaration of invalidity, finding, among other things, that there was "no evidence that an election is anticipated within 12 months".⁸

Court of Appeal for Ontario

16. Four by-elections were called on May 11, 2014.⁹ The Attorney General sought a stay from Sharpe J.A. of the Ontario Court of Appeal pending the appeal, with the four by-elections to be held on June 30, 2014. Sharpe J.A. denied the stay on June 23, 2014.¹⁰

17. The Court of Appeal heard the appeal on January 6 and 7, 2015. On July 20, 2015, the Court of Appeal allowed the appeal and set aside the

⁷ The *SVR* provisions being paragraphs 222(1)(b) & (c), paragraph 223(1)(f), subsection 226(f), and the word "temporarily" in section 220, subsection 222(1) and paragraph 223(1)(e); Applicants' Application for Leave to Appeal, Tab 3A, B & C, pp. 8-87.1, Reasons for Judgment of Penny J., dated May 2, 2014, Amended Reasons for Judgment & Order dated May 15, 2014

⁸ Applicants' Application for Leave to Appeal, Tab 3B, p. 81, Amended Reasons for Judgment of Penny J., at para. 159

⁹ Applicants' Application for Leave to Appeal, Tab 3D, p. 91, Decision of Justice Sharpe, dated June 23, 2014, at para. 10

¹⁰ Applicants' Application for Leave to Appeal, Tab 3D, p. 98, Decision of Justice Sharpe, dated June 23, 2014, at para. 32

Superior Court judgment.¹¹ Chief Justice Strathy wrote the majority opinion, supported by Brown J.A. and Laskin J.A. dissented.

4) Legislative history on the long-established fundamental connection between voting and residence

18. Prior to the First World War, electors needed to cast their vote in person in the polling division in which they resided.¹² An exception to this residence requirement was made during the First World War to allow Canadians fighting overseas to vote from overseas and have their vote counted in an electoral district in Canada.¹³ In the Second World War, provisions were once again introduced towards the same end. In 1945, provisions were added to allow Canadians held as prisoners of war to also vote.¹⁴

19. Parliament has also enacted provisions to allow two other groups of Canadians serving the country abroad to vote while away: in 1970, for diplomats posted abroad in the service of Canada or a province,¹⁵ and in 1993, for citizens working for international organizations of which Canada is a member and to which Canada contributes.¹⁶ For both groups, accompanying family members are also permitted to vote from abroad, if they are eligible to vote.

20. In 1981, during the consideration of the draft Charter of Rights and Freedoms by the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada, Acting Minister of Justice Kaplan was asked whether a residence requirement to the proposed guarantee of voting rights to

¹¹ Applicants' Application for Leave to Appeal, Tab 3E, p. 56, Decision of the Court of Appeal, dated July 20, 2015, at para. 160

¹² Applicants' Application for Leave to Appeal, Tab 3E, pp. 104-105, Decision of the Court of Appeal, dated July 20, 2015, at paras. 10-16

¹³ Applicants' Application for Leave to Appeal, Tab 3E, p. 104, Decision of the Court of Appeal, dated July 20, 2015, at para. 11; these soldiers were, after all, prepared to make the ultimate sacrifice on Canada's behalf

¹⁴ Applicants' Application for Leave to Appeal, Tab 3E, p. 104, Decision of the Court of Appeal, dated July 20, 2015, at para. 12

¹⁵ Applicants' Application for Leave to Appeal, Tab 3E, p. 105, Decision of the Court of Appeal, dated July 20, 2015, at para. 14

¹⁶ *An Act to amend the Canada Elections Act*, S.C. 1993, c. 19, s. 24, enacting s. 51.1(c)

citizens could be justified under s. 1. He replied by stating that Canadian citizens “who do not live in our country for one reason or another may be justifiably deprived of the right to participate in an election”.¹⁷

21. In 1993, Parliament extended the right to vote by mail (external voting) to citizens temporarily resident outside Canada. Parliament defined temporarily resident outside Canada as requiring citizens to have been resident abroad for less than 5 continuous years, and that they have an ongoing intention to resume residence in Canada.¹⁸ The limits to this extension of postal voting rights to temporary non-residents addressed the concern of preventing non-resident voters from having undue influence on the voting of citizens resident in a Canadian electoral district.¹⁹

PART II – QUESTION IN ISSUE

22. The only issue in this application is whether it raises a question of public importance that warrants consideration by this Court.

¹⁷ Response of the Attorney General of Canada to the Applicants' Application for Leave to Appeal, Tab 2B, p. 34, *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada*, Thursday, January 22, 1981, Issue No. 43 at 43:85; see also *Sauvé No. 2*, at para. 85 per Gonthier J., dissenting, but not on this point

¹⁸ Applicants' Application for Leave to Appeal, Tab 3E, p. 105, Decision of the Court of Appeal, dated July 20, 2015, at para. 16

¹⁹ Response of the Attorney General of Canada to the Applicants' Application for Leave to Appeal, Tab 2A, p. 27, Canada, House of Commons: Minutes of the Proceedings and Evidence of the Special Committee on Electoral Reform, Issue No. 3, March 25, 1992 at 3:30-3:31 (chaired by Mr. Jim Hawkes), per Mr. Howard Crosby (MP for Halifax West); and Tab 2A, p. 24, Minutes of the Proceedings and Evidence of the Standing Committee on Privileges and Elections, Issue No. 1, March 27, 1984, at 1:30 per Mr. Reid (MP for Kenora-Rainy River). See also Applicants' Application for Leave to Appeal, Tab 3E, p.134, Decision of the Court of Appeal, dated July 20, 2015, at para. 102 per Mr. Hawkes.

PART III – STATEMENT OF ARGUMENT

23. This proceeding does not raise an issue of public importance that does not already have a clear answer in this Court's jurisprudence.

Sauvé No. 2

24. In *Sauvé No. 2*, this Court describes the essential architecture of Canada's democratic system. The power of lawmakers flows from the voting citizen – the lawmaker acts as the citizen's proxy. This delegation gives the law its legitimacy or force. The legitimacy of the law and the obligation to obey it flow directly from the citizen's right to vote.²⁰ This Court concludes:

[...] “having a voice in making the law and being obliged to obey it” is “the vital, symbolic, theoretical and practical connection” that “stands at the heart of our system of constitutional democracy.”²¹
[Emphasis added.]

25. The majority decision of the Ontario Court of Appeal recognizes that geography necessarily limits the citizenship responsibilities of long-term non-residents. Because they do not reside in Canada, most domestic Canadian laws have no little or no influence over their daily life. Few Canadian laws even purport to have extra-territorial application. Generally, no Canadian law can be enforced outside Canada without the consent of the foreign state. While long-term non-residents may continue to be affected by some Canadian laws, their citizenship obligations cannot be the same as that of resident citizens.

26. The Court of Appeal simply applied this Court's jurisprudence in *Sauvé No. 2*. If long-term non-residents were able to exercise the right to vote without the same essential reciprocal obligations borne by resident Canadians, Canada's electoral system would become inherently unfair to those resident

²⁰ *Sauvé No. 2*, at para. 31

²¹ *Sauvé No. 2*, at para. 31

Canadians. The non-resident would exercise the right with little or no reciprocal burden, while the resident Canadian citizen would bear the full burden of everyone's vote, including the votes of long-term non-residents who could determine the outcome in an electoral district. The social contract which underpins and legitimizes Canadian government would be breached.

27. The Court of Appeal correctly applied this Court's jurisprudence on the section 1 justification of the breach to the s. 3 right to vote.

Pressing and Substantial Purpose

28. There is no issue of public importance relating to the pressing and substantial purpose for limiting the extension of the postal voting right to temporarily non-resident citizens.

29. In 1993, Parliament extended the voting franchise. It did not enact a law removing existing statutory voting rights. Postal voting rights were extended to citizens temporarily resident outside Canada because they had an ongoing intention to return, and would likely do so within 5 years. Upon that predictable resumption of Canadian residence, they would resume the full citizenship responsibilities that can only accrue when a citizen resides within Canada's geographic boundaries, and is fully subject to her domestic laws.

30. The "temporary non-resident" limits imposed by Parliament preserve the reciprocal nature of the rights and obligations that this Court describes as the vital symbolic, theoretical and practical connection that "stands at the heart of our system of constitutional democracy".²² Preserving that essential connection "enshrined in the Charter"²³ is therefore necessarily pressing and substantial.

²² *Sauvé No. 2*, at para. 31

²³ *Sauvé No. 2*, at para. 31

31. In addition to the endorsement in *Sauvé No. 2*, this Court has also held that the pressing and substantial purpose in the context of section 3 rights can flow from operation of “the tenets of a free and democratic society”.²⁴ In *Harvey*, for example, this Court accepted as a pressing and substantial purpose the maintenance and enhancement of the integrity of the electoral process.²⁵ Similarly, in *Figueroa*, this Court accepted as a pressing and substantial purpose the preservation of the integrity of the electoral financing regime.²⁶

Proportionality

Rational Connection

32. The rational connection between residence-based limits to voting rights and the protection of the fairness and integrity of voting in a democratic political system is manifest and apparent. In provincial and territorial electoral laws, analogous provisions requiring certain periods of residence before an elector can vote have been upheld as constitutionally valid. Counterpart limits to those at issue here exist in comparable Westminster parliamentary democracies and the European Court of Human Rights has found the United Kingdom limit to be justified. There is no issue of public importance in relation to this first part of the proportionality analysis.

33. The rational connection between the varying minimum residence requirements of every provincial and territorial electoral statute and protecting the integrity of their elections and electoral processes has been recognized by the Saskatchewan Court of Appeal and superior courts of two territories.²⁷ The judgments found the residence requirements to voting in the respective electoral

²⁴ *Harvey v. New Brunswick (AG)*, [1996] 2 S.C.R. 876, at para. 38 (“*Harvey*”)

²⁵ *Harvey*, at para. 38

²⁶ *Figueroa v. Canada (Attorney General)*, 2003 SCC 37, [2003] 1 SCR 912, at para. 72

²⁷ *Storey v. Zazelenchuk*, [1984] SJ No. 800, (1984), 36 Sask. R. 103 (CA), at paras. 125-127 (“*Storey*”); *Anawak v. Nunavut (Chief Electoral Officer)*, 2008 NUCJ 26, [2008] Nu.J. No. 26, at paras. 83 & 89 (“*Anawak*”), *Re Yukon Election Residency Requirements*, [1986] YJ No. 14, (1986), 27 DLR (4th) 146 (CA), at pp. 148 to 150 (“*Yukon Election*”)

statutes to breach s. 3 of the Charter, but concluded these limits to be demonstrably justified in a free and democratic society. The residence limits were found to be reasonably necessary to secure the confidence of resident electors in the provincial and territorial electoral systems or to ensure that voters had a sufficient connection with the jurisdiction in which they were voting.

34. The UK, Australia and New Zealand all require residence to vote, and all limit the mail voting rights of non-resident citizens to those temporarily resident abroad. Each of these comparable Westminster Parliamentary electoral systems defines temporary residence abroad differently – the UK 15 years, Australia 6 years, albeit renewable, and New Zealand 3 years; but they all impose some limit on the voting of non-resident citizens until they resume residence.

35. The UK limit to external mail voting of 15 years was challenged in the European Court of Human Rights. Article 3 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms has been determined to guarantee the right to vote. In *Shindler*, the European Court ruled that the UK Parliament, in enacting the 15 year limit, was “pursuing the legitimate aim of confining the franchise to those citizens with a close connection with the United Kingdom and who would therefore be most directly affected by its laws.” The Court held that the limit to Mr. Shindler’s right to vote was “proportionate to the legitimate aim pursued”.²⁸

36. In the earlier case of *Hilbe*, involving a limit on external voting in the domestic electoral law of Lichtenstein, the European Court elaborated on its jurisprudence that unfairness to resident voters was one valid purpose for limiting external voting to temporarily non-resident citizens. The other three valid purposes were non-residents’ lack of direct engagement and knowledge,

²⁸ *Shindler v. The United Kingdom Judgment*, Application no. 19840/09, 7 May 2, 2013, at para. 105 (“*Shindler*”)

difficulties in campaigning with respect to non-residents, and the lack of direct consequences of voting results on non-residents.²⁹

Minimal Impairment

37. There is also no issue of public importance relating to the minimal impairment of Parliament's definition of temporary non-residence. Residence and age are limits to voting that make no subjective evaluation of the worthiness of an individual elector. The citizen is either resident in Canada (or will be returning within 5 years pursuant to an ongoing intention to return) or not. Long-term residence abroad is a choice that results, by geographical necessity, in that citizen's day-to-day life being governed by the laws of their place of residence. Upon their resumption of residence in Canada, so too does their voting right immediately resume. This, like a minimum age, is a modality of the right to vote. It is only when a citizen reaches the age of 18 that their voting right begins.³⁰

38. It follows that the impugned limits need not be the least restrictive possible to qualify as minimally impairing, but only fall within a range of reasonable alternatives. Beyond that, the specific issue of where to draw the line is for Parliament,³¹ and warrants deference. Importantly, even under a stringent justification standard, Parliament is not required to accept an option that would be less effective than the one chosen to achieve its purposes.³²

39. The Court of Appeal properly found that the limit of five years and having an intention to return fell within a reasonable range of alternatives. This is supported by the fact that all comparable Westminster systems have set a limit

²⁹ *Hilbe v Liechtenstein* Decision (Application no. 31981/ 96), ECHR 19999-VI, p. 459, ("*Hilbe*") cited in *Shindler*, at para 105

³⁰ *Sauvé No. 2*, at para 37

³¹ *Sauvé No. 2*, at para 174 (per Gonthier J., in dissent, but not on this point)

³² *Canada (Attorney General) v. JTI-Macdonald*, 2007 SCC 30, [2007] 2 S.C.R. 610, at para 43; *Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37, [2009] 2 S.C.R. 567, at paras 53-55 & 62

on the right of their long term non-resident citizens to continue voting, and that residential requirements to the right to vote have been upheld as constitutional in the context of the right to vote in the provinces and territories and by the European Court of Human Rights. The appellate court noted that the five year limit is minimally impairing because the citizen is entitled to resume voting immediately upon resumption of residence.

Final Balancing

40. Finally, there is no issue of public importance found in the final balancing required in this Court's s. 1 justification test.

41. The salutary effect of Parliament limiting the extension of mail voting to temporary non-residents is that the right to vote of Canadian citizens is given due priority while the essential purpose of the long standing residency requirement in Canada's electoral system is maintained. Citizens voting in a federal election will either have the same citizenship responsibilities, or be reasonably presumed to soon resume them. The social contract that defines our democratic system is maintained. This, in turn, maintains public confidence in the fairness and integrity of the electoral system, vital to any democracy.

42. The deleterious effect of this limit is that long term non-resident Canadians will continue to be required to resume residence in Canada before resuming their entitlement to vote.

Other Arguments Made by the Applicants

43. Justice Laskin and the applicants are simply incorrect in suggesting that the argument properly accepted and applied by the majority was a new argument made by the Attorney General. At every step in this proceeding, the Attorney General argued that the essential fairness and integrity of the electoral system is based on all voters having an equal right to vote and obligation to obey the laws enacted by those who are elected. This was the evidence of the Attorney General's expert at first instance,³³ and the essential argument made at first instance. It is true that the Attorney General did not use this Court's phrase "social contract" to describe this essential connection of our democratic system until the appeal, but, as found by the majority, the phrase simply describes the underlying concept that the Attorney General had always argued. For this reason, the applicants made no objection to the Attorney General's use of the phrase "social contract" in the appellate court.

44. Further, and as already mentioned, the objective geographical and legal reality that long-term non-residents have lesser obligations under Canada's domestic laws than resident Canadians is qualitatively different from improper subjective evaluations of the worthiness of electors. It has nothing to do with who the citizen is. It is based simply on where they live and how long they have been away. The sovereignty of nations generally requires that the domestic laws of one country cannot be enforced in another. On a related, but more practical level, the laws enacted by the government of one's place of residence have the greatest impact in that person's day-to day life. This geographical truth is very different from arguments that a person's gender, property or status as a prison inmate should determine their ability to vote.

³³ Response of the Attorney General of Canada to the Applicants' Application for Leave to Appeal, Tab 2A, pp.29-33; Excerpts from the Affidavit of Munroe Eagles, sworn March 4, 2013, paras. 16, 70, 71 & 120: "To extend the right to vote to all citizens regardless of residence would effectively diminish the citizenship rights of residents by granting them to those who would not be subject to the same level of citizenship obligations". (para. 70)

PART IV – COSTS

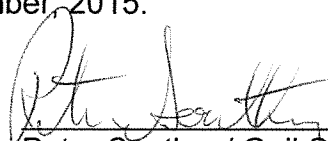
45. The Attorney General requests the costs of responding to the leave application. As no issue of public importance has been raised, there is no reason not to follow the normal course of costs being awarded to the successful party.

PART V – NATURE OF ORDER SOUGHT

46. The Attorney General of Canada requests that the application for leave to appeal be dismissed, with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at Toronto this 9th day of November, 2015.



Peter Southey/ Gail Sinclair/
Peter Hajecek

Counsel for the Respondent, the
Attorney General of Canada

PART VI – TABLE OF AUTHORITIES

<u>Caselaw</u>	<u>Cited at Paras.</u>
<i>Alberta v Hutterian Brethren of Wilson Colony</i> , 2009 SCC 37, [2009] 2 SCR 567	38
<i>Anawak v Nunavut (Chief Electoral Officer)</i> , 2008 NUCJ 26, [2008] Nu.J No. 26	33
<i>Canada (Attorney General) v JTI-Macdonald</i> , 2007 SCC 30, [2007] 2 SCR 610	38
<i>Figueroa v Canada (Attorney General)</i> , 2003 SCC 37, [2003] 1 SCR 912	31
<i>Harvey v New Brunswick (AG)</i> , [1996] 2 SCR 876	31
<i>Hilbe v Liechtenstein Decision</i> (Application no. 31981/ 96), ECHR 1999-VI	36
<i>Opitz v Wrzesnewskyj</i> , 2012 SCC 55, 3 SCR 76	9
<i>Re Yukon Election Residency Requirements</i> , [1986] YJ No. 14, (1986), 27 DLR (4th) 146 (CA)	33
<i>Sauvé v Canada (Chief Electoral Officer)</i> , 2002 SCC 68, [2002] 3 SCR 519	2, 20, 24, 30, 37 & 38
<i>Shindler v The United Kingdom Judgment</i> , Application no. 19840/ 09, 7 May 2, 2013	35
<i>Storey v Zazelenchuk</i> , [1984] SJ No. 800, (1984), 36 Sask. R. 103 (CA)	33

PART VII – STATUTES RELIED ON

Canada Elections Act, S.C. 2000, c. 9, ss. 11(d), 220, 222(1)(b) & (c), 223(1)(e) & (f), 226(f)

<p>11. Any of the following persons may vote in accordance with Part 11:</p> <p>[...]</p> <p>(d) a person who has been absent from Canada for less than five consecutive years and who intends to return to Canada as a resident</p>	<p>11. Peuvent voter dans le cadre de la partie 11:</p> <p>[...]</p> <p>d) les électeurs qui sont absents du Canada depuis moins de cinq années consécutives et qui ont l'intention de revenir résider au Canada</p>
<p>Definitions</p> <p>220. The definitions in this section apply in this Division.</p> <p>“elector” « <i>électeur</i> »</p> <p>“elector” means an elector, other than a Canadian Forces elector, who resides temporarily outside Canada.</p> <p>“register” « <i>registre</i> »</p> <p>“register” means the register referred to in subsection 222(1).</p>	<p>Définitions</p> <p>220. Les définitions qui suivent s'appliquent à la présente section.</p> <p>« électeur » “<i>elector</i>”</p> <p>« électeur » Électeur résidant à l'étranger temporairement, à l'exclusion d'un électeur des Forces canadiennes.</p> <p>« registre » “<i>register</i>”</p> <p>« registre » Le registre visé au paragraphe 222(1).</p>
<p>Register of electors</p> <p>222. (1) The Chief Electoral Officer shall maintain a register of electors who are temporarily resident outside Canada in which is entered the name, date of birth, civic and mailing addresses, sex and electoral district of each elector who has filed an</p>	<p>Registre</p> <p>222. (1) Le directeur général des élections tient un registre des électeurs résidant temporairement à l'étranger où il inscrit les nom, date de naissance, sexe, adresses municipale et postale et circonscription des électeurs qui ont présenté une demande</p>

<p>application for registration and special ballot and who</p> <p>[...]</p> <p>(b) has been residing outside Canada for less than five consecutive years immediately before making the application; and</p> <p>(c) intends to return to Canada to resume residence in the future.</p>	<p>d'inscription et de bulletin de vote spécial et qui satisfont aux conditions suivantes :</p> <p>[...]</p> <p>b) résider à l'étranger depuis moins de cinq années consécutives au moment de la présentation de la demande;</p> <p>c) avoir l'intention de rentrer au Canada pour y résider.</p>
<p>Inclusion in register</p> <p>223. (1) An application for registration and special ballot may be made by an elector. It shall be in the prescribed form and shall include</p> <p>[...]</p> <p>(e) the address of the elector's last place of ordinary residence in Canada before he or she left Canada or the address of the place of ordinary residence in Canada of the spouse, the common-law partner or a relative of the elector, a relative of the elector's spouse or common-law partner, a person in relation to whom the elector is a dependant or a person with whom the elector would live but for his or her residing temporarily outside Canada;</p> <p>(f) the date on which the elector intends to resume residence in Canada;</p>	<p>Demande d'inscription</p> <p>223. (1) La demande d'inscription et de bulletin de vote spécial est faite selon le formulaire prescrit et doit contenir les éléments suivants, en ce qui concerne l'électeur :</p> <p>[...]</p> <p>e) l'adresse soit du lieu de sa résidence habituelle au Canada avant son départ pour l'étranger, soit du lieu de la résidence habituelle au Canada de son époux, de son conjoint de fait, d'un parent, d'un parent de son époux ou de son conjoint de fait, d'une personne à la charge de qui il est ou de la personne avec laquelle il demeurerait s'il ne résidait pas temporairement à l'étranger;</p> <p>f) la date à laquelle il a l'intention de rentrer au Canada pour y résider;</p>

<p>Deletion of names from register</p> <p>226. The Chief Electoral Officer shall delete from the register the name of an elector who</p> <p>[...]</p> <p><i>f)</i> except for an elector to whom any of paragraphs 222(2)(a) to (d) applies, has resided outside Canada for five consecutive years or more.</p>	<p>Radiation</p> <p>226. Le directeur général des élections radie du registre le nom de l'électeur dans les cas suivants :</p> <p>[...]</p> <p><i>f)</i> sauf s'il est visé au paragraphe 222(2), l'électeur a résidé à l'étranger pendant cinq années consécutives ou plus.</p>
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