

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

GILLIAN FRANK and JAMIE DUONG

Applicants

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA
AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA**

Respondent

**APPLICATION UNDER Rule 14.05(3) of the *Rules of Civil Procedure* and the
Canadian Charter of Rights and Freedoms, ss. 1, 3 and *Constitution Act*,
1982, s. 52.**

AFFIDAVIT OF DON DE VORETZ

I, **DON John DE VORETZ**, of the Township of Langley, in the Province of British Columbia, in Canada, MAKE OATH AND SAY:

1. I am a Professor Emeritus of Simon Fraser University ("SFU"), having worked at SFU in the Department of Economics for 42 years. As described further below, my areas of specialty include the economics of immigration with special emphasis on citizenship issues. As such I have knowledge of the matters to which I depose in this Affidavit.

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Qualifications

2. I obtained my doctorate in Economics from the University of Wisconsin (Madison) in 1968. I was a Professor of Economics at SFU from 1968 until my retirement in 2010. While at SFU (from 1996 to 2007), I was the Co-Director and Principal Investigator of RIIM, which was Vancouver's Centre of Excellence on Immigration Studies. I have held visiting appointments at Duke University, University of Ibadan (Nigeria), University of the Philippines, University of Wisconsin, and the Norwegian School of Economics. I was also a guest scholar at Malmo University in Sweden. I currently am a Research Fellow with IZA (Institute for the Study of Labor) in Germany and the Migration Research Group, also in Germany. I also was the Research Director at the Asia Pacific Foundation of Canada from 2008 to April 2011. I was named a British Columbia Scholar to China in 2000.
3. I have published extensively on issues related to the economics of immigration and citizenship. Since approximately 2000, I have conducted research related to the emigration of Canadians and to economic issues related to naturalized Canadians. Recently, I have conducted research specifically relating to Canadians living abroad. As the Research Director of the Asia Pacific Foundation of Canada ("APF", described further below), I conducted research related to the numbers of Canadians living abroad and taxation payments by Canadians living abroad. I also oversaw research conducted by others related to Canadians living abroad.
4. Attached and marked as Exhibit "A" to this Affidavit is a copy of my current *curriculum vitae*.

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5. I have been invited to present findings from my research regarding Canadians living abroad to the Government of Canada. In March, 2010, I attended an inter-ministerial meeting organized by the Canadian Department of Foreign Affairs and International Trade (DFAIT). At this meeting, I spoke about the size and composition of Canadians living abroad. I also assisted with case studies of Canadians living abroad and discussed their connections to Canada. The meeting was organized by DFAIT with Canadian consulates from abroad, and particularly, New York and California, to develop business strategies with respect to Canadians living abroad.

2.8 Million Canadians Abroad

6. In 2008/2009, I completed research estimating and analyzing the number of Canadians living abroad. My research concluded that the number of Canadians living abroad is significant, akin to the size of an average Canadian province. Most of these citizens were born in Canada and lived in one of a few countries, with the highest number residing in the United States.
7. This research arose as part of my position as Director of Research for the Asia Pacific Foundation of Canada. The Asia Pacific Foundation of Canada ("APF") is an independent, non-profit think-tank on Canada's relations with Asia. In 2008, the APF embarked on a three-year research project aimed at filling in an information gap relating to Canada's permanent population abroad. The project was entitled *Canadians Abroad*. I have referred to my own research and the research of others on this project below.
8. As part of the *Canadians Abroad* project I conducted research to determine statistics related to Canadian diaspora. Attached and marked as Exhibit "B" to

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this Affidavit is a copy of my resulting research paper, dated October 29, 2009 and entitled "Canada's Secret Province: 2.8 Million Canadians Abroad". This is the same research which I presented at the inter-ministerial meeting of March, 2010 described above.

9. My research was incorporated into the Asia Pacific Foundation's final report entitled *Canadians Abroad: Canada's Global Asset* dated 2011. Attached as Exhibit "C" to this Affidavit is a copy of that report.
10. Based on my research, in 2009 (and based on the most current available census data up to 2006), I estimated Canada's diaspora to be approximately 2.8 million people. In my research I defined diaspora as a Canadian citizen who had lived abroad for one year or more. The 2.8 million number amounted to approximately 8% of Canada's population at the time. That number has grown subsequently as more naturalized Canadians have left Canada.
11. As I noted in my paper, of the 13 provinces and territories of Canada, only four have a greater population size. For that reason, I described these Canadians abroad as a "missing province".
12. As part of my research, I further determined that the majority of Canadian citizens living abroad are born in Canada. Naturalized Canadians (i.e. those born abroad and later granted Canadian citizenship) were a minority.
13. Of the 2.8 million Canadians abroad, 50% were found in four broad locations: the United States, greater China (ie China, Taiwan and Hong Kong SAR), the United Kingdom and Australia.

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14. By far the largest concentration (36% or 1 million Canadians) were living in the United States. Greater China had 292,000 Canadians, the United Kingdom had 70,000 Canadians and 27, 289 Canadians lived in Australia.

Attachments to Canada

15. The research conducted by the APF also included surveys of Canadians living abroad to identify the composition of that population and their views toward Canada. According to the research, Canadians abroad continue to have a wide variety of attachments to Canada.
16. The methodology of the APF's survey is described in the paper which sets out the survey's findings. This paper, entitled *Global Canadians: A Survey of Views of Canadians Abroad* is attached to this Affidavit as Exhibit "D". By way of summary, the survey's findings are representative of expatriate Canadians residing in Asia and the United States who belong to business associations and social clubs and networks associated with Canada. This group contains many Canadians who reside abroad long-term and whose employment requires their placement abroad. The survey had a very high response rate. In my view, the survey provides useful information as to the types of connections which this group of Canadians abroad has to Canada. The survey is referred to in this Affidavit as the "APF survey".

Citizenship

17. The APF survey found that most surveyed Canadian citizens abroad were Canadian-born and citizens of Canada alone. Specifically, 60% were solo Canadian citizens or Canadian citizens with permanent residency in another

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country. By contrast, 36% were dual citizens and 4% Canadian landed immigrants. Some 65% of Canadians, according to the survey, gained citizenship by birth, while 29% gained it through immigration and naturalization.

Home and Family

18. Respondents to the APF survey reported strong familial connections and a sense of belonging to Canada. According to the APF survey:
- 94% of respondents had visited Canada since they established principal residency abroad;
 - 54% make at least one trip to Canada per year;
 - 69% of respondents indicated they had plans to return to Canada in the future;
 - Nearly 64% of respondents indicated that they considered Canada their home, where they had strong family ties and emotional links.
 - In terms of their family and personal lives, 66% of respondents identified more closely with Canada than with their country of residence.

Employment

19. Respondents to the APF survey also showed employment-related connections to Canada. According to the APF survey, approximately 2 out of 3 Canadians living abroad left Canada for work-related reasons. Nearly one-third of respondents reported working abroad for Canadian entities, including government, businesses, NGOs or self-employment.

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20. Respondents associated professionally with Canada slightly more (47%) than with their country of residence (46%).
21. On a related point, nearly 95% of respondents reported having some post-secondary education.

Current Affairs

22. According to the survey, 64% of respondents obtained Canadian news and information from friends and family “frequently” or “very frequently”. The second leading source of Canadian news was domestic Canadian media (including print, web and broadcast sources). The survey reported that 57% of respondents obtained Canadian news from these sources “frequently” or “very frequently”

Social Insurance Programs

23. Canadians abroad also can be connected to Canada through social insurance programs. This type of attachment is described in a paper by Kenny Zhang entitled *Attached, Less Attached or Not Attached? Participation in Canada of Overseas Canadian Citizens*, which is attached as Exhibit “E” to this Affidavit.
24. While living abroad, Canadians may make contributions or otherwise accrue entitlement to payments from Canadian social insurance programs. They also may receive payments from Canadian social insurance programs while living abroad if, for example, they retire abroad after having contributed to Canadian social insurance programs for many years.

25. A significant social insurance program in Canada is the Canada Pension Plan ("CPP") (a contributory social insurance program based on earnings). Canada has social security agreements with 52 countries to help people qualify for benefits from either the CPP or a comparable plan in another country. Through these agreements, Canadians who live abroad may contribute to the foreign country's social insurance program and these contributions will count toward their minimum qualifying conditions for CPP. In other words, Canadians living abroad may have the opportunity to make contributions which later would qualify them to receive CPP payments when they move home. As part of the bilateral agreements with other countries, it also may be possible for Canadians living abroad to qualify for benefits in Canada and in the other country, regardless of whether they return to Canada.
26. Canadians who have lived at home for many years also may contribute to CPP and, when they retire abroad, they remain entitled to payments. For Canadians abroad who qualify for CPP payments, CPP payments may be made anywhere in the world in local currency where applicable and, if not, in Canadian dollars. In some countries, such as the United States or United Kingdom, CPP payments can be deposited directly to an account at a local financial institution and the funds automatically are converted into local currency.
27. The Old Age Security program is also relevant to Canadians abroad. While it is payable at age 65 to Canadians who meet certain residence conditions, these do not necessarily include continuous residence nor current residence in Canada. In other words, Canadians who have lived abroad for extensive periods and then return to Canada can qualify for Old Age Security. Similarly, Canadians who have lived in Canada for a lengthy period and then move abroad may also qualify for payments.

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28. To qualify for payments within Canada, the person needs to have lived in Canada for at least 10 years after age 18. It is also possible to qualify for payments while living outside of Canada, and in this case the person needs to have lived in Canada for at least 20 years after age 18.
29. According to Human Resources and Skills Development Canada, in 2008, Canada paid a total of \$637 million in social benefits to countries with which Canada has concluded a social security agreement. This covered 225,799 Canadian residents in 48 countries.

Taxation

30. While Canadian citizens living permanently abroad typically are not required to pay Canadian taxes on worldwide income, they do have some obligations to pay tax in Canada. Moreover, as a group they do pay significant taxes in Canada, particularly in the context of their comparatively lesser use of Canadian social programs, for example, health care.
31. Specifically, those who apply for and are granted non-resident status still need to report certain types of Canadian-source income on a Canadian tax return. These include:
 - a. Income from employment in Canada;
 - b. Income from a business carried on in Canada;
 - c. Taxable Canadian scholarships, bursaries and research grants;
 - d. Taxable capital gains resulting from dispositions of taxable Canadian property.

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32. For other sources of Canadian income, non-resident Canadians are required to pay taxes through source withholdings, but may not be required to file returns. These include:
- a. Canadian source investment income;
 - b. Canadian source pension, annuities and similar payments; and
 - c. Rental income from real property.

In addition, for an Old Age Security pension, non-resident Canadians may be required to file an *Old Age Security Return of Income*. Attached and marked as Exhibit "F" to this Affidavit is the Canada Customs and Revenue Agency's information pamphlet Canadian Residents Abroad T4131(E) Rev. 11.

33. If Canadians abroad hold property in Canada, they would be required to pay property taxes and taxes involved in the sale and transfer of property. They also would be required to pay taxes on capital gains.
34. Of course, Canadians resident abroad are required to pay income taxes to their countries of residence with respect to income earned in that country. In some cases this would be expected to result in lower taxes payable and in some cases it would be expected to result in higher taxes. In the United States, which hosts the largest concentration of Canadians abroad, some Canadians would pay higher income tax (including city taxes, state taxes and social security payments) than they would in Canada. A Canadian who moves to New York City, for example, would pay more in taxes than if she stayed in Calgary. In addition, the key expatriate resident areas of the United Kingdom, France and Australia and most other EU countries all have higher income tax rates than Canada.

35. According to the AFP survey, only 6% of foreign-born Canadians and 0.3% of Canadian-born Canadians indicate that tax was the key motivation for living outside Canada.
36. I have analyzed total income tax payments by Canadian citizens living abroad to the Canadian treasury. The Canadian Government Public Accounts provides a consistent record of these transfers from 1961 until 2008-2009. This record is attached to this Affidavit as Exhibit "G" and can be found at <http://www.fin.gc.ca/frt-trf/2009/frt0901-eng.asp#tbl3>.
37. Non-resident income taxes paid to the Canadian treasury *circa* 2008-2009 was in excess of \$6 billion dollars or 5.2% of all personal income taxes collected in 2008-2009.
38. Given that 8 per cent of the Canadian population lives abroad, their tax revenues at first would seem less than proportional to their population size. However, it must be understood that, unlike resident Canadian citizens, this group derives few, if any, monetized benefits (such as health care or education) from their payment of taxes. In that sense, the more than \$6 billion dollars transferred by non-resident citizens to the Canadian treasury acts largely as a subsidy to Canadian citizens resident in Canada.
39. It is also important to note that the historical data series regarding taxes paid by Canadians abroad shows a parallel but increased rise in the non-resident income taxes paid to Canada as compared to the rise in the Canadian population abroad. In particular, in 1998-1999, Canadians abroad paid \$2.2 billion into the treasury. As noted, this amount rose to \$6 billion ten years later in 2008-2009. Given that the population abroad in 2001 was approximately 2.5 million it

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appears that the payment of taxes to Canada is growing at an even faster rate than is the Canadian population abroad.

40. My research also has shown that when Canadians living abroad do return to Canada, they make high tax contributions compared to their use of services. Specifically, the analysis shows that, until the age of 62, and while still in the labour force, the average Canadian-born Canadian returning home from abroad pays much more in taxes than he or she uses in services. Attached to this Affidavit as Exhibit is "H" is a copy of my 2010 paper, "Circulating Canadians: Hands Across the Border?" which sets out my analysis for this conclusion.

Over a Million Canadians Excluded from Voting


41. A large group of Canadian citizens are prohibited from voting by the *Canada Elections Act*. The APF survey determined that nearly 56% of Canadians abroad have lived outside of Canada for more than five years. According to the 2006 census, 88% of Canadians are 20 years of age or older. Using this rough figure to apply to the 2.8 million Canadians abroad, approximately 1.4 million Canadians abroad who otherwise would be entitled to vote in Canada are prohibited from voting by the legislative provisions which exclude persons who have been living outside of Canada for five years or more from voting.
42. I note that this rough figure does not deduct the number of Canadians who have been living abroad for five years or more and fall within one of the exclusions found in the *Canada Elections Act* (e.g. an elector employed in the federal public administration or public service of a province, an elector employed outside Canada by an international organization; a member of the Canadian Forces or a person who lives with one of these electors). Nonetheless, taking those

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deductions into account, it is clear that well over a million Canadians are unable to vote from abroad.

- 43. I make this affidavit in reference to the application to have relevant provisions of the *Canada Elections Act*, as described in the Notice of Application, declared unconstitutional and of no force and effect and for no other or improper purpose.

Township *DRT*
 SWORN BEFORE ME at the City of
Langley ~~Burnaby~~, in the Province of British
 Columbia, this day of May 2012.



 A Commissioner for taking Affidavits.



 DON DE VORETZ

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