

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

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 GILLIAN FRANK

I, GILLIAN FRANK, of the City of New York in the State of New York, in the United States of America, MAKE OATH AND SAY:

1. I am an Applicant in this matter and as such have knowledge of the matters to which I depose in this Affidavit.
2. I am a citizen of Canada, having been born in Toronto on December 14, 1978. I currently live in Brooklyn, New York. Prior to the most recent Canadian federal election, in May of 2011, I attempted to register on-line to vote and discovered that I was ineligible to vote in Canada. I understand that I am ineligible because I have been resident outside of Canada for five years or more.

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- 3. I moved to the United States to complete my education and to obtain employment. I am completing post-doctoral studies in History and have been successful in obtaining employment in the United States but, to date, in spite of applying for all appropriate academic positions in Canada, I have not succeeded in obtaining employment at a Canadian university. I am only living in the United States because I have not been able to obtain employment in my field in Canada. I consider Canada to be my home. The reasons why I reside outside of Canada are beyond my control in the sense that if I could pursue my profession in Canada I would. I have personal and family connections to Canada and will return when a professional opportunity arises.

- 4. I remain interested in Canadian political and social issues. I follow public events in Canada carefully and feel the need to participate in the Canadian democratic process. I consider the right to vote as fundamental to my Canadian citizenship and the deprivation of this right as an affront to my dignity in that I feel like a second-class Canadian. I should not be required to forego the opportunity to fully pursue a professional career in order to maintain my fundamental right to vote.

Background and Family

- 5. I was born in and have lived most of my life in Canada. I grew up in North York, Ontario and lived there until I was 22 years old (in 2001).

- 6. For high school, I attended York Mills Collegiate Institute from 1993 to 1997.

- 7. In the summer prior to my final year of high school I joined the Canadian Forces reserves and served in the 709 Communications Regiment. I joined the Canadian Forces because I wanted to serve my country and contribute to making the world better. I completed basic training and worked part time for the

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Canadian Forces over the next two years. I typically worked two nights each week and two weekends each month. During my final year of high school, I graduated early and spent my last semester working for the Canadian Forces full-time. I also, in 1998, took one week away from school to serve during the ice storm in Eastern Ontario.

8. From 1997 until 2001, I attended York University and completed an Honours degree in English with a number of courses in History. I graduated summa cum laude and won the Governor General's Silver Medal for the highest grade point average. I was one of three graduating undergraduate students to receive this award because I showed the highest distinction in scholarship at York University. I actively participated in academic and social life at York University, including serving on the student senate. I paid the costs of my undergraduate degree through my earnings from work in the military, as well as from tutoring high school students.
9. Upon graduation, I wanted to pursue graduate work. I was encouraged by faculty and advisors at York University to apply to Ivy League Schools in the United States, where I might have the opportunity to receive full funding for graduate studies. I was advised by these same faculty that I would receive much better funding in the United States. I had spoken to numerous graduate students in Canada and it appeared it took them much longer to finish their studies than the expected length of their programs due to difficulties with finances. Ultimately I was accepted on full scholarship for seven years to Brown University in Providence, Rhode Island. I completed my PhD at Brown in December 2008 and received my degree in May, 2009.
10. Starting in September of 2008, I worked in teaching positions in the United States: first as a visiting professor at Colby College, an undergraduate university in Maine (from September 2008 to May 2009) and subsequently as a faculty

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fellow at Rowan University in New Jersey (from September 2009 to May 2011). Currently I live in Brooklyn and am completing post-doctoral studies at the State University of New York at Stony Brook in Long Island, New York.

11. I am married and my wife is also a Canadian citizen who was born and grew up in Toronto. I met my wife in 2005 in Toronto. My wife and I were married in Toronto in May of 2010. My wife was trained as a lawyer in Canada and currently works at a law firm in New York City. Both of my parents and my brother live and work in Toronto. My wife's family, including her parents and brother, all live in Toronto.
12. Since I completed my PhD, I have applied for every academic job in Canada which is appropriate to my areas of expertise and would advance my career (approximately eight positions). These include positions in Cultural Studies, Women's Studies, Gender and Sexuality Studies and 20th Century United States History. Last year I was a finalist for a position at St. Mary's University in Halifax, Nova Scotia, but ultimately I was not the successful candidate.
13. If I am successful in obtaining an academic position in Canada, I will move back to Canada without hesitation. My wife and I have just had a baby and we would prefer to live and raise our child(ren) in Canada because we value a society that emphasizes issues of social justice. The United States is not "home" to us. We very much identify ourselves as Canadians and hold values that we associate with our Canadian heritage.

Residency in United States

14. Because I have, for the moment, established my professional life in the United States, I have become a resident of the United States.
15. I have paid taxes in the United States since 2001. During my first few years in {C0509572.1}

the United States, I also paid taxes to Canada as I had not completely severed my residential ties to Canada.

16. My current immigration status is on a TN visa, which allows me to work in the United States and must be renewed every few years.
17. I have a bank account and investments (mutual funds and some stocks) in the United States. I also have a pension (401K) through my employer and am a beneficiary on my wife's pension (401K). I also have a Canadian bank account, which is held jointly with my mother, and a Canadian credit card.
18. I receive my health insurance in the United States through my employer.

Ongoing Connections to Canada

19. I have many friends and family in Canada and travel to Canada approximately four times per year (for Christmas, Passover, Thanksgiving and on approximately one other occasion, for example, for a wedding or vacation). Over the past two years, I have been in Canada approximately 13 times in order to visit family, plan my own wedding and for the weddings of friends.
20. As I mentioned above, I consider Canada to be my home. Since moving to the United States, I have been active in maintaining ties to Canada. At my graduate school, Brown University, I founded a Canadian club, which was a forum for Canadian students to connect. We held social and networking events, including activities such as "Hockey Night in Canada" and "Canadian Movie Night". I obtained sponsorship for our group's events from Labatt's and Tim Horton's.
21. Since moving to New York, I have joined the Canadian Association of New York. Again, this is an organization which allows Canadians living in New York to

connect with one another. Through this organization I have participated each year in the Terry Fox Run in Central Park. I have attended events to meet and network with other expatriate Canadians, including to watch Hockey Night in Canada games and Olympic events.

22. I consider myself well-informed about Canadian politics. I regularly read the Toronto Star on the internet. I also listen to CBC radio 3 (for music) and I read the CBC news website approximately twice per week.

Voting

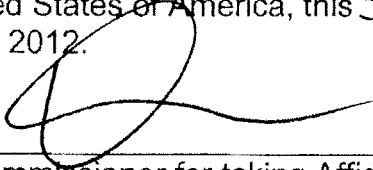
23. I only recently became aware that I was unable to vote in Canada. Prior to the May 2011 federal election, I attempted to apply on-line, through the Elections Canada website, to have a special ballot sent to me in Brooklyn. I was informed by the Elections Canada website that I was not entitled to receive a ballot since I had been resident outside the country for five years or more.
24. Prior to 2011, there had been three other Canadian federal elections since I moved to the United States in 2001 (in 2004, 2006 and 2008). To the best of my recollection, I did not vote in those elections. However, in the spring of 2011, I felt very strongly about ensuring that I voted in the Canadian federal election. I had been following Canadian politics and was concerned about a number of issues. It appeared to me that this was an important election, given the possibility of a majority government in Parliament after several years of minority governments.
25. Since realizing that I am not entitled to vote in Canada, I have taken a number of steps in an attempt to change this situation. I contacted a Member of Parliament whom I know personally, Megan Leslie (NDP Member of Parliament from Halifax, Nova Scotia) to discuss this issue. I understand that Ms Leslie intends to

introduce a private member's bill on this issue to Parliament. I joined an online group devoted to expat Canadians seeking to be re-enfranchised. Through this site, I have connected with other Canadian citizens living abroad who are concerned about this issue. Together, we have contacted a number of journalists and asked them to cover our cause. I further contacted a number of constitutional scholars to find out about my rights and what I could do to change this rule.

26. With the assistance of Ms Leslie and her staff, I also have created and circulated a petition addressed to the Government of Canada and requesting that the right to vote be restored to all Canadian citizens living abroad, regardless of the duration of their absence from Canada. Attached as Exhibit A to my affidavit is a copy of the unsigned petition.
27. I do not intend to reside permanently in the United States. As set out above, I want to move to Canada and I am making every effort to obtain an academic position there. I am only in the United States because I have not been able to obtain a job in Canada in my chosen profession. Accordingly, I have not sought immigration status in the United States other than on the temporary TN visa. I travel on a Canadian passport and am not entitled to vote in the United States.
28. I consider the right to vote to be fundamental to my Canadian citizenship. Again, I consider the deprivation of this right to be an affront to my dignity in that I feel like a second-class Canadian. The law which deprives me of my right to vote leaves me with a Hobson's choice: if I want to exercise my full rights as a Canadian, I will have to surrender my professional life and the full self-realization associated with pursuing my professional career. I should not have to choose between my right to pursue a profession and my right to vote.

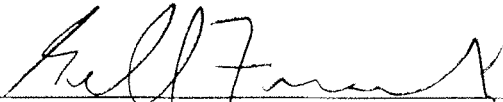
29. I make this affidavit in support of my application to have sections of the *Canada Elections Act* (as set out in the Notice of Application) declared unconstitutional and of no force and effect, and for no other or improper purpose.

SWORN BEFORE ME at the City of New York, in the State of New York, United States of America, this 5 day of May, 2012.



A Commissioner for taking Affidavits.

VINCENT Y. H. MAN


GILLIAN FRANK