

Court File No.CV-12-453976

**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 JEAN-PIERRE KINGSLEY
(In Reply)**

I, **JEAN-PIERRE KINGSLEY**, of the City of Ottawa, in the Province of
Ontario, in Canada, MAKE OATH AND SAY:

1. I swear this affidavit in reply to portions of the affidavits of Dr. Royce Koop and
Dr. Donald Munroe Eagles.

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I. Expansion of Right to Vote Has Not Been a Slow Progression

2. At paragraph 107 of his affidavit, Dr. Koop states that, over the course of the 20th century, Canadian governments have expanded the right to vote to non-resident voters "slowly and cautiously; only to members of certain small groups in special circumstances".

3. In my opinion, in order to understand the extension of the right to vote in 20th century Canada, it is critical to consider the broader context of enfranchisement, including groups beyond non-resident voters. The discussion also is not complete without considering the impact of the Charter on the expansion of voting rights to new groups. In this context, the history of the right to vote in 20th century Canada shows not a slow and cautious expansion, but rather what I describe as a "hodge podge", with a number of dramatic expansions of the right to vote, as well as groups who were entitled to vote and subsequently lost the right to vote (Japanese Canadians, for example).

4. It is not a slow and steady progression; although, following the patriation of the *Charter*, there has been a clear trend toward removing limitations on the right to vote. This trend has included removing barriers with respect to Canadians living abroad. In addition, the expansion of rights since the advent of the Charter has been effected primarily through the courts rather than through Parliament.

5. During my tenure as Chief Electoral Officer of Canada, I commissioned five authors to write a history of the right to vote in Canada. I thought it was important for

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Canadians to know this history and have it easily available to them. Two historians (Pierre Dufour and Michael Kinnear), two political scientists (Louis Massicotte and Lisa Young) and a freelance writer (David Jorgensen), with my guidance and oversight, wrote *A History of the Vote in Canada ("History")*. This book is published on the Elections Canada website. I reproduce and rely directly on portions of this book in this part of my Affidavit. Attached as Exhibit A to my Affidavit are the Preface to the book, which I wrote, as well as the chapters of the book used for this part of my Affidavit. I have referenced below relevant page numbers from the book.

6. The most dramatic example of the expansion of the right to vote in the 20th century was the enfranchisement of women. At Confederation, all of the original colonies had statutory provisions excluding women from voting and these were entrenched in s. 41 of the *British North America Act* (p. 61 of *History*). However, in 1918, the *Act to confer the Electoral Franchise upon Women* was passed. The general election of 1921 was the first open to all Canadians, men and women, over the age of 21. The single step of enfranchising women roughly doubled the number of eligible voters in Canadian federal elections (p. 71 of *History*).

7. The next large expansion of the right to vote occurred when the voting age was reduced from 21 to 18. People between the ages of 18 and 20 were granted the right to vote in 1970 and used it for the first time in the 1972 election. This change, again by a single step, expanded the electorate by some 2 million people (p. 91 of *History*).

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8. The patriation of the *Charter* in 1982 then led to significant developments with respect to the expansion of the right to vote. Since 1982, the trend has been toward the removal of barriers to voting. The removal of these barriers has been effected primarily through the courts rather than Parliament.

9. For example, judges appointed by the federal Cabinet had been legally disqualified from voting since 1874 (p. 97 of *History*). The law remained in place until 1993, but a *Charter* based court ruling at the time of the 1988 general election rendered the provisions inoperative (*Muldoon v. Canada*, [1988] 3 F.C. 628 (T.D.)). About 500 federally appointed judges became eligible to cast ballots after a court struck down the relevant section of the *Canada Elections Act*, declaring it contrary to s. 3 of the *Charter*.

10. Prisoners had not been allowed to vote since 1898. However, following the advent of the *Charter*, a prisoner named Sauvé challenged the long-standing provision in the *Canada Elections Act* which prohibited inmates from voting. In its 1993 decision, the Supreme Court of Canada held that this prohibition was contrary to s. 3 of the *Charter* (pp. 97-98 of *History*).

11. In 1993, Parliament removed from the law the disqualification for prisoners serving sentences of less than two years, but for prisoners serving longer terms, the disqualification remained in effect. Sauvé again challenged the new provision. In its decision in *Sauvé v. Canada (Chief Electoral Officer)* in 2002, the Supreme Court of

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Canada again found the legislative provision to violate the *Charter*. Since 2002, and to this day, the relevant provision of the *Canada Elections Act* (s. 4(c)) has not been amended by Parliament (p. 98 of *History*).

12. Nonetheless, the Chief Electoral Officer is required by the Court's ruling to provide all inmates with the right to vote. This is done pursuant to s. 17 of the *Canada Elections Act*, which permits the Chief Electoral Officer to "adapt any provision of [the] Act" in certain circumstances. I recall during my terms as Chief Electoral Officer receiving a letter from Clifford Olson, an inmate who was convicted of serial murders, and who wrote to me requesting the ability to vote. He seemingly wished to confirm that he would be permitted to vote, as per the Supreme Court's ruling. I was legally required to allow him to vote and I advised him that he did have that right.

13. In the last three general elections, the number of incarcerated electors who have voted has ranged from approximately 11,500 to approximately 17,000. This is almost double the number of voters from outside of Canada (other than members of the Canadian forces), as set out at paragraph 74 of my Affidavit sworn in May, 2012.

14. In the 1980s and early 1990s, several changes in election administration and the *Canada Elections Act* made it significantly easier for electors with physical disabilities to vote. However, one group of people with disabilities remained explicitly disenfranchised -- those who were "restrained liberty of movement or deprived of the management of

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[their] property by reason of mental disease." In 1985, a House of Commons committee recommended that they be enumerated and have the same right to vote as other Canadians and the Lortie Commission reached a similar conclusion in its 1992 report (pp. 98-100 of *History*).

15. In the meantime, the courts struck down the provision. In 1988, the Canadian Disability Rights Council argued in a *Charter* challenge (*Canadian Disability Rights Council v. Canada*, [1988] 3 F.C. 622 (T.D.)) that the *Canada Elections Act* should not disqualify people who were under some form of restraint because of mental disability. The Court agreed, although the ruling did not specify what level of mental competence would qualify a voter. In 1993, Parliament removed the disqualification for people with mental disability altogether, as part of Bill C-114 (p. 100 of *History*). Now there is not one mention in the *Canada Elections Act* of an elector's mental capacity. As long as a voter is able to manifest the will to vote and take the necessary steps to vote, it does not matter if s/he has a mental disability, including having lost control over his or her assets.

16. In 1993, Bill C-114 also made voting more accessible by effectively replacing proxy voting with an extension of the Special Voting Rules in the *Canada Elections Act* so that all electors could use the special ballot to vote by mail or in the office of the returning officer. The special ballot allows people to vote who are away from their home ridings, who have disabilities, who are prison inmates or who otherwise cannot vote on election day or at an advance poll (p. 101 of *History*).

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17. As discussed in my May 2012 affidavit, Bill C-14 also permitted Canadians living outside the country for five years or less to vote under the Special Voting Rules. This change was made following the 1992 *Clifford* decision, which was issued in response to a s. 3 *Charter* challenge in the Ontario Court General Division. As set out in my previous affidavit, the amendments were made in response to the judge's recommendation that Parliament enact legislation in this area.

18. Once advance voting became available to all citizens in 1993, the number of advance voters rose. Canadian voters increasingly took advantage of the early opportunity to cast a ballot. Before the 1993 changes, just over 500,000 Canadians voted at advance polls during the 1988 general election. That number rose to 633,000 in 1993 and 704,000 in 1997. In 2000, 775,000 Canadians voted in advance; in 2004, that number rose to 1.2 million, and to 1.5 million in 2006 (p. 103 of *History*). Of this number, as stated in my affidavit sworn on May 11, 2012, approximately 6,000 to 9,000 were Canadian citizens living abroad (other than members of the Canadian Forces).

19. In my view, then, the history of voting rights in 20th Century Canada shows dramatic expansions of the right to vote at particular moments in time. It also shows a trend toward removing limitations on the right to vote, including with respect to electors living outside the country, particularly since the advent of the *Charter*.

II. System Replete with Compromises of Residence Principle

20. In the affidavit of Dr. Koop, he states that Parliamentarians have viewed residence as a key principle in determining who shall have the franchise and where that franchise shall be exercised (para 6, for example). Moreover, according to Dr. Koop, "governments have consistently recognized the importance of residence as essential to the conduct of both representation and elections in Canada" (para 10).

21. While I do not disagree that residence is one principle of the Canadian system, under the *Canada Elections Act* (the "Act"), it is not part of a person's basic qualification to vote. Rather, it is a procedural aspect of the vote which designates where one exercise's one's entitlement. Section 3 of the Act provides the qualifications required to vote (that is, being a Canadian citizen and 18 years of age or older). It makes no reference to residence. Section 6 of the Act then sets out where a qualified person may vote (in the polling division in which he or she is ordinarily resident). In other words, under the Act, residence is not part of the basic qualification to vote; it is a procedural aspect which allows the exercise of the right to vote.

22. In addition, while residence is one principle which is used in the exercise of the right to vote, our current system is replete with compromises, or, put differently, an exceedingly broad interpretation of the residence principle in order to actualize the right to vote for a number of different groups.

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23. The Special Voting Rules in the Act both maintain a connection to a Canadian residence for the voter, while also compromising on the principle of residence, both by the broad definition of Canadian residence, and by not requiring the voter to actually reside in the place of residence. These compromises apply to a number of groups of voters, including incarcerated voters, members of the Canadian Forces, and other Canadians living outside the country for the first five years or who, for example, work for certain international organizations. The result is that a number of Canadians currently vote while not being resident in the place of residence identified for voting purposes. The Act allows them to be resident elsewhere for many years or to never have resided there.

A. *Canadian Forces*

24. The rules with respect to Canadian Forces Electors (Part 11, Division 2 of the Act) state that the elector may vote in the electoral district that includes the place of ordinary residence that the elector has stated in his or her statement of ordinary residence. In the elector's statement of ordinary residence, his or her residence is identified as the civic address of his or her place of ordinary residence immediately before enrolment or hiring in the Canadian Forces. Needless to say, members of the Canadian Forces can be resident outside of their identified residences, including outside Canada, for extended periods of time. Members of the Canadian Forces are permitted to vote in their places of residence prior to enrolment in the Canadian Forces for their *entire careers* in the Canadian Forces.

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25. A Canadian Forces elector also is entitled to amend his or her statement of ordinary residence to identify his or her place of ordinary residence as one of several options, in which he or she may never have lived. These are the place of ordinary residence of a spouse, common-law partner, a relative or dependant, a relative or dependant of his or her spouse or, finally, of a person with whom the elector would live but for his or her being enrolled in the Canadian Forces (s. 194(4) of the Act). Indeed, considering the option of choosing a spouse or partner's relative, an elector may identify a residence in which he or she has never resided and of a person he or she has never met.

B. Incarcerated Electors

26. The rules with respect to incarcerated electors (Part 11, Division 5 of the Act) similarly require the elector to indicate a residence, but it is not where the person actually resides. For an incarcerated elector, the place of ordinary residence can be his or her residence before being incarcerated, the residence of a spouse, common law partner, relative or dependant, a relative of his or her spouse or common law partner or a person with whom the elector would live but for his or her incarceration. It also could be the place where the elector was arrested or the last court where the elector was convicted or sentenced.

27. Again, what is striking about these potential places of "ordinary residence" is that the elector's identified residence is not where he or she resides while incarcerated. This applies to electors who have received life sentences and may have been incarcerated {C0726903.2}

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for 25 years, meaning that for 25 years, the elector identifies and his or her vote is counted in an electoral district in which he or she does not reside (unless the institution in which s/he is incarcerated happens to be in the same electoral district as the identified place of residence). In addition, considering the potential places of ordinary residence which an elector may identify, other than his or her residence before being incarcerated, the identified residence may be a place in which he or she has never resided.

C. Electors Resident Outside Canada

28. In addition to Canadian Forces electors and incarcerated electors, both of whom are permitted to vote for an indefinite period of time in an electoral district in which they do not reside, other groups of Canadian citizens also are permitted to vote for an indefinite period while living outside Canada. These include electors employed outside Canada in the federal public administration or the public service of a province, electors employed outside Canada by an international organization (of which Canada is a member and to which Canada contributes) and any person who lives with a person in one of these two groups (see section 222(2)(a) to (c) of the Act). These groups also include electors who live with a member of the Canadian Forces or with a person who is employed outside Canada by the Canadian Forces as a teacher in, or as a member of the administrative support staff for, a Canadian Forces school (s. 222(2) (d) of the Act).

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29. Again, these groups are required to identify a Canadian place of residence in much the same way as the Canadian Forces electors. The place of residence, again, could include a place in which he or she has never lived (s.223(1)(e) of the Act).

30. The Special Voting Rules in the Act also include rules allowing Canadian citizens who have been residing outside Canada for less than five consecutive years to vote. Like Canadian Forces electors, incarcerated electors, and the other groups who are permitted to vote from outside Canada for an indefinite period, this group is required to identify a Canadian place of residence in his or her application for registration to vote. This could include the elector's last place of ordinary residence in Canada, the place of ordinary residence of his or her spouse, common-law partner or relative, a relative of the 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 temporarily residing outside Canada. Like the other groups, votes for this group are attached to an identified place of residence in Canada and are counted in that electoral district.

31. The current system also provides the (theoretical) ability to vote for Canadian citizens who have resided and continue to reside outside of Canada for five years or more. That is, according to Elections Canada, Canadian citizens who do not meet the criteria for being added to the International Register of Electors (for example, because they have resided outside the country for five years or more), may vote in person at an advance poll or on voting day. If the elector has no new place of residence in Canada,

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he or she may vote at the polling place associated with his or her last place of ordinary residence in Canada or the polling place associated with the address that was provided to the International Register for Electors if he or she was previously approved for voting from abroad. Of course, this method of voting is highly unsatisfactory because it makes it much more difficult for these electors to vote as compared to those living in Canada or those living outside of Canada for up to the first five years. Attached as Exhibit B to this Affidavit is a copy of the information published by Elections Canada with respect to voting in person for electors who do not otherwise qualify under the Special Voting Rules.

32. In my opinion, then, while residence is one principle of our electoral system, it has been interpreted exceedingly broadly in order to effectuate the right to vote for different groups. These groups are required to identify a place of residence, thus maintaining some connection to residence for the purpose of allocating the vote to an electoral district. However, this is what I would describe as a somewhat artificial notion of residence employed to effectuate the right to vote for Canadian citizens who do not actually reside in the electoral district in which their votes will be counted. This broad or compromised position on residence includes citizens living abroad for more than five years, who may vote in person according to a residence which is not where they actually live.

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III. Establishing Constituencies and Communicating with Voters

33. In their affidavits, Dr. Eagles and Dr. Koop have raised a number of issues broadly related to establishing constituencies which include non-resident voters and communicating with non-resident voters. In my opinion, none of these issues poses any problem for the functioning of our elections system. Among other things, our current slate of non-residents who are permitted to vote, described above, has not, in my opinion, caused any of the problems raised by Dr. Eagles and Dr. Koop.

34. In his affidavit, Dr. Eagles described what he considered to be "among the most pressing problems" of permitting non-residents to vote in Canada's electoral system. This was the "inability to take account of external voters in the process of defining constituencies" (paragraph 18 of his affidavit, with the issue of defining constituencies also discussed in part E of his affidavit).

35. In addition, Dr. Koop raised concerns about the alleged inability of candidates to contact and communicate with non-resident voters (see part E of his affidavit). Both Dr. Koop and Dr. Eagles have suggested that personal contact with local organizations and their personnel is particularly important in Canadian elections (see, for example, paras 92-93 of the affidavit of Dr. Eagles and paras 124-125 of the affidavit of Dr. Koop) and Dr. Eagles has claimed that there is a significant local dimension to federal elections in Canada (paras 87-95). Dr. Eagles also has raised concerns about the enforcement of Canada's election financing rules (para 18).

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36. I disagree that allowing citizens who have been residing outside the country for five years or more to vote by the Special Voting Rules will create any pressing problem with respect to defining constituencies. I also am of the view that candidates are able to communicate effectively with non-resident voters and that direct, local contact is only one limited part of Canadian federal elections. In my view, our federal elections are both national and local elections and, finally, allowing a greater number of Canadians living outside the country to vote will cause no discernible issues with respect to enforcing election spending.

A. *No Complaints re Voters Not Resident in Canada*

37. At the outset and prior to responding to the individual issues raised by Drs. Koop and Eagles in more detail, I can advise that I am not aware of any specific concerns which have been raised with Elections Canada relating to electors resident outside of Canada for up to five years, nor with electors resident outside of Canada who are permitted to vote in Canada on polling day.

38. To the best of my recollection, I do not recall such a complaint having been raised during my tenure as the Chief Electoral Officer. In addition, I have reviewed correspondence from counsel for the Applicants to Elections Canada dated March 12, 2013, in which counsel asked whether Elections Canada had received any complaints about Canadians voting from abroad during the first five years of their residency outside Canada. By response dated March 18, 2013, counsel for Elections Canada advised that from the 2011 general election to the present, "no complaint was identified about {C0726903.2}

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someone objecting to the fact that electors who have lived abroad for five years or less receive a ballot by mail and can vote from abroad". In addition, officials responsible for the Special Voting Rules provisions of the Act at Elections Canada could not recall such a complaint ever having been made. Attached as Exhibit C to this Affidavit is a copy of the March 12, 2013 letter from counsel for the Applicants. Attached as Exhibit D to this Affidavit is Elections Canada's March 18, 2013 response.

39. I also have reviewed correspondence from Elections Canada to counsel for the Applicants dated April 12, 2013. In that correspondence, Karen McNeil, legal counsel for Elections Canada, advised that Elections Canada had undertaken further searches "for any complaints that Elections Canada may have received about electors who reside outside of Canada being permitted to vote in federal elections". She advised that, by the date of her letter, Elections Canada had searched two of four relevant sources dating back to 2003 (the oldest records related to electors registered in the international register of electors). She advised that Elections Canada is currently continuing to search the other two sources. Their searches to date uncovered no complaints objecting to the fact that electors who have lived abroad for five years or less are able to vote from abroad, nor about the fact that electors who reside outside of Canada may vote at federal elections. Ms McNeil also advised that no officials at Elections Canada responsible for Special Voting Rules recalled such a complaint ever having been made. Attached as Exhibit E to this Affidavit is a copy of Elections Canada's April 12, 2013 letter.

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B. No Difficulty with Defining Constituencies

40. I agree with Dr. Eagles at paragraph 42 of his affidavit where he says that the population of a constituency can vary by 25% above or below the quotient for the province. Moreover, a boundary commission can decide to exceed that 25% either way in circumstances considered to be justified. The 25% potential variation in a constituency calculates to a potential population variation from one riding to the next of 40%. Considering the comparatively small numbers of voters expected to vote from outside Canada, and considering in any event the vast variation of population among constituencies, the impact of voters from outside of Canada on numbers in a constituency would be minimal.

41. As set out in my affidavit sworn on May 11, 2012, between 6,000 and 9,000 Canadian citizens living abroad voted in each election since the 2000 general election (excluding those voting under the exception for members of the Canadian Forces).

42. According to the affidavit of Dr. De Voretz sworn in May 2012, of the approximately 2.9 million Canadian citizens living outside the country, approximately 1.4 million of them are of voting age and have been abroad for five years or more. This number includes those who would be entitled to vote by the other exceptions set out in the Act, such as Canadian Forces voters. Nonetheless, this rough number is close to half of all Canadians living outside Canada. Therefore, a rough estimate of the number

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of electors outside of Canada who are likely to vote under the Special Voting Rules after five years or more away, if permitted, is approximately the same as have voted in the first five years – that is, approximately 6,000 to 9,000 voters. In my view, the number of electors who will vote after residing outside the country for five years or more actually will be lower than those in the first five years; however I will use the highest number, 9,000 voters, for the purpose of this hypothetical illustration. If 9,000 additional voters were to vote in the next general election, this would calculate to approximately on average 30 new voters per riding. The approximate average number of electors in each Canadian riding is 100,000. In other words, the additional voters from outside the country would impact the population of the constituency by .03%.

43. In any event, decisions with respect to the boundaries of a constituency are based on Statistics Canada population counts and not on the number of electors. This means that they include residents who are not Canadian citizens and not entitled to vote (e.g. recent immigrants) and those under the age of 18 who are not entitled to vote. Because the boundaries are not determined on the basis of the number of electors, electors living outside the country who currently are entitled to vote by the Special Voting Rules (e.g. those in the Canadian Forces, those resident outside the country for five years or less, and the other groups described above) are not counted for the purpose of determining these boundaries. The inclusion of more Canadians resident outside the country for five years or more would not impact a process of boundary redistribution.

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44. I note, too, that to the extent boundary commissions have any “problem” caused by voters residing outside the country, that problem would exist already due to the ability of citizens to vote during their first five years abroad, as well as the other groups entitled to vote under the Special Voting Rules and who are not resident in their electoral districts.

C. Members of Parliament Can Communicate with Non-Resident Voters

45. With respect to communicating with non-resident voters, in my view, candidates are able to communicate effectively with non-resident voters. Candidates receive the name and contact information of every elector on the International Register of Electors, both as a preliminary list during the election and as a final list after the election.

46. During the election, Elections Canada provides a list of international electors to political parties and candidates as a separate file when providing the preliminary list of all electors to them (see ss. 93-94 of the Act). This list of international electors includes the name, address, last Canadian residence and mailing address (outside of Canada) of each elector.

47. After the election, Elections Canada provides Members of Parliament and political parties with the final lists of electors (see s. 109 of the Act). This also includes the list of international electors as a separate file. MPs receive the final list of electors

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for their electoral district, whereas parties receive the lists for each electoral district in which they endorsed a candidate.

48. In addition, each year on or before November 15, Members of Parliament and political parties receive the annual lists of electors, derived from the National Register of Electors, which also includes a separate list of international electors.

49. Members of Parliament also have individual websites. These websites typically have information to contact the MP, including telephone numbers and e-mail addresses. Some MPs have Facebook pages, some send tweets from Twitter accounts, some have blogs or other posts on their websites and some allow individuals to sign up to receive regular e-mail updates. It is easy for an interested elector to stay informed regarding the work of and issues relevant to a particular Member of Parliament. It is also worth noting that the major political parties have elaborate websites which provide extensive information about their policies and offer a number of opportunities to stay connected to the party through electronic updates, volunteering, donating, and connecting on social media, among others.

50. Moreover, in my view, a very small proportion of electors have direct, personal contact with a Member of Parliament, particularly during an election campaign. As set out above, a federal electoral district has, on average, a population of 100,000. The Chief Electoral Officer issues the writ 36 days before polling day (s. 57 of the Act).

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Candidates then have until 21 days before polling day to file their nomination papers (s. 69 of the Act). This means that candidates have between 21 and 36 days to campaign for a federal election. This is a short period of time to reach approximately 100,000 people in person.

D. National Campaigns

51. I also am of the view that the central thrust of our federal elections is national campaigns. It is important to be aware that the leader of a political party must sign the nomination papers of any candidate running as a member of that party. This means that the candidate must be endorsed by the party. While occasionally a local candidate will have sufficient profile and reputation to have local recognition, the party leader has significant influence on the outcome of the election. The issues, while they may have some local components or impact, are largely national in scope. In addition, Members of Parliament, once elected, have increasingly limited autonomy to vote in the House of Commons other than as directed by their party leaders, at the risk of discipline.

E. No Concerns regarding Election Spending

52. Finally, I do not agree that allowing citizens who have been outside the country for five years or more to vote would raise any concerns regarding election spending. I am not aware of any issues that have arisen with election spending relating to Canadian

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citizens living outside Canada who are permitted to vote under the current Special Voting Rules. Candidates for federal election are required to report all expenditures, wherever they are made, which are incurred as part of the campaign. Therefore, if candidates choose to expend funds to reach voters outside the country, they will be required to report those expenses.

IV. No Rationale for Five Years

53. In his affidavit, Dr. Eagles states that the absence of an explicit justification for the five year maximum limit for Canadians to live abroad without losing their vote is unfortunate. He suggests that a plausible explanation for the five year limit includes that it in principle allows a Canadian voter abroad to vote in at least one federal election and that it is half the period of the decennial census. He also states that students who pursue post-secondary education would be normally able to vote for their study abroad (para 116 of his affidavit).

54. These explanations strike me as *ex-post facto* justifications which are not compelling and which have no connection to why five years was chosen in the first place. The census, which occurs every ten years, has no connection to an election other than being used to readjust constituency boundaries every ten years. Election dates have no connection to the census and there is no relevancy to the halfway mark of the census.

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55. While Parliament technically may last for five years, as a practical matter, Canadian Parliaments have a life of four years or less. The average is approximately three years. The last five-year Parliament in Canada was during World War II.

56. Similarly, there is no real connection between five years and students who pursue secondary education outside the country. A typical undergraduate degree takes either three or four years to complete. Post-graduate work can take a further one to seven years (or more) to complete. Five years is neither connected to the average completion of an undergraduate degree, nor to the completion of post-graduate work.

57. In short, none of these explanations, in my view, is able to rehabilitate the five year limit, which was arbitrarily chosen by Members of Parliament.

58. I swear 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.

SWORN BEFORE ME at the City of
 Toronto, Ottawa, in the Province of Ontario, this ^{7th}
 day of May, 2013.



 A Commissioner for taking Affidavits.

Shaun O'Brien

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JEAN-PIERRE KINGSLEY