

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 JAMIE DUONG

I, **JAMIE DUONG**, of the City of Ithaca, 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 I have knowledge of the matters to which I depose in this Affidavit.
2. I am a citizen of Canada, having been born in Montreal, Quebec on July 15, 1983. I currently live in Ithaca, 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 more than five years.

3. I currently am resident in New York State. I remained here following the completion of my studies at Cornell University and in order to continue employment which I started as a student at Cornell. I voted in a number of Canadian provincial and federal elections when I was either attending university or residing in the United States. In each case, I was able to be in Canada either for the election or for an advance poll. In May, 2011, I was not able to be in Canada to vote and I tried for the first time to vote from abroad (unsuccessfully).
4. I am only in the United States because of my employment. I have personal and family connections to Canada and I continue to visit Canada regularly. I will return to Canada if a professional opportunity arises.
5. I keep apprised of Canadian news and current events and feel the need to participate in the Canadian democratic process. Voting is extremely important to me and I consider it to be a fundamental aspect to my Canadian citizenship. It is an affront to my dignity that I am required to forego exercising my fundamental right to vote in order to continue my employment in the United States. I should not be required to choose between pursuing my professional career and my right to vote.

Background and Family

6. I was born in Canada and have lived back and forth between Canada and the United States throughout my life. My father, originally from Vietnam, moved to Canada in 1964 when he was awarded a scholarship to study chemical engineering at the Université de Montréal. Because of the war in Vietnam, my father stayed in Canada and, in 1986, became a Canadian citizen.

7. My mother met my father in Montreal in 1972 when she was visiting a friend there. My mother originally was from the United States. After having met my father, my mother transferred her studies to McGill University. My parents were married in 1977 in Nova Scotia and my mother became a Canadian citizen in the early 1990s.
8. My older sister was born in Montreal in 1980. My parents and my sister all currently live in Montreal. My sister is attending law school at McGill University, my father owns and operates a computer store and my mother teaches English as a Second Language at a cégep in Laval, Quebec.
9. I attended primary school in Montreal and started high school there. In tenth grade, I transferred to a boarding school in Vermont, USA. I graduated from high school in 2001.
10. From 2001 to 2004 I attended Cornell University in Ithaca, New York, pursuing a Bachelor of Science degree in Animal Science. In 2004, I moved back to Montreal and, for one semester, took a number of courses at Concordia University. I then went to Vietnam for several months. In 2005/2006 I completed my last year at Cornell University and obtained my Bachelor of Science degree.
11. During my years in high school and at Cornell University, I spent my summer and almost every other holiday in Canada. Over the summer, I usually spent several weeks at a family property in Nova Scotia and otherwise assisted my father at his computer store in Montreal.
12. While I attended my final year at Cornell, I had been working as a student on campus assisting with information technology at the School of Industrial Labor

Relations. I was able to turn that job into a permanent position and I have continued to be employed at Cornell since I graduated. I currently manage public computing and instructional technologies at the Cornell School of Hotel Administration.

13. I consider Canada to be my home and would like to return to live there. I am only living in the United States because of my employment. I periodically review postings for jobs in Canada which are related to my expertise. I have sent in applications in response to these postings but have not yet been called for any interviews. If I find an appropriate professional position in Canada, I will return to live there.

Residency in United States

14. I currently am a resident of the United States. I obtain my health coverage and my pension (401K) from Cornell University. I also have a bank account and a house which I purchased in 2009 and on which I continue to make mortgage payments.
15. Although my mother originally is from the United States, until recently, none of her siblings lived here. I have one aunt who now lives in Vermont and whom I see once or twice per year. My mother's brother now lives in Virginia.
16. Because of my mother's background, I am a citizen of the United States. While I was a student, I filed tax returns in both Canada and the United States (as I am required as a citizen to file in the United States even if not resident there). Since graduating from Cornell and becoming a resident of the United States, I no longer file tax returns in Canada. I understand that I will owe property taxes in Canada once I gain partial ownership of my family's properties in Nova Scotia

and Quebec.

Ongoing Connections to Canada

17. While my assets now are primarily in the United States, I do have an account at the Royal Bank of Canada in Montreal. It holds approximately \$1500 to \$2,000. I also have a Visa credit card for that account.
18. My family owns a property in Nova Scotia and two buildings in Montreal. We currently are in the process of determining the best way to transfer ownership of the Nova Scotia property and one of the Montreal buildings to my generation. Therefore, I expect within approximately the next decade that I will become a partial owner of those properties.
19. While I was attending high school and university in the United States, I remained resident in Canada and returned home for almost every break. Since graduation from Cornell in 2006, I have become resident in the United States but I continue to return home regularly. It takes me approximately five and a half hours to drive from Ithaca, N.Y. to Montreal. I typically return to Montreal every Christmas and for some stretch every summer. I also return to Montreal for Canadian Thanksgiving, American Thanksgiving, for Labour Day and sometimes after the June graduation at Cornell when work at the university slows down.
20. Since the days when I was a student at Cornell, I have actively maintained ties to my Canadian heritage. In my sophomore year, I joined the Canadians at Cornell club, which is a group for Canadian students to connect and socialize. I attended social events through the group, such as hockey viewing parties for the Montreal Canadiens or Toronto Maple Leafs. The group also joined together to watch Canadian election results.

21. I have always and continue to follow the Canadian news closely. Nearly every day, I read the Globe and Mail newspaper, the Montreal Gazette and La Presse online through Google News. I followed Jack Layton's tweets on Twitter until his recent passing.

Voting

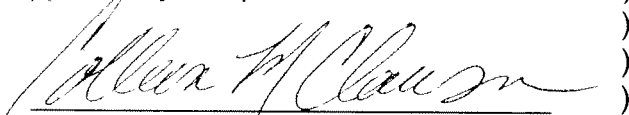
22. Voting is extremely important to me. I view it as a part of citizenship. In my view, as citizens, we have an obligation to vote to assist in steering our country in the right direction.
23. I have voted in a number of federal (Canadian) and provincial (Quebec) elections since turning 18. I turned 18 years old in 2001. In the most recent federal election of May 2011, I attempted to vote and was prohibited from doing so.
24. In June, 2004, I voted in the federal election as I had returned to Montreal from Cornell at the end of the school year. I voted in the 2006 federal election, which took place in January, as I was home for the Christmas break. I believe I voted in that election in an advance poll. In March of 2007, I voted in the Quebec provincial election as I was home for vacation on polling day. In December of 2008, I again voted during advance polling for the Quebec provincial election.
25. Because I am a citizen of the United States, I also am entitled to and do vote in American elections.
26. I was unable to return to Canada for the 2011 Canadian federal election. I therefore looked into how I could obtain a ballot from abroad. I tried to apply for a ballot via the Elections Canada website, but the website advised me that I did

not qualify as I had been resident outside of Canada for too long. As a result, I was unable to vote in that election.

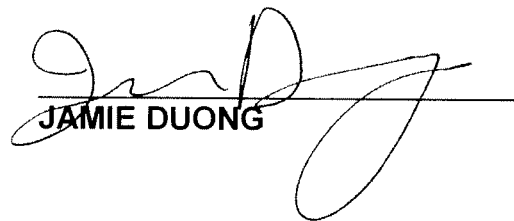
27. I was very shocked to discover that I was unable to vote. I have always considered the connection between citizenship and voting to be sacrosanct. As a result of my concern, I began researching the issue in more detail. I connected via Facebook with a group of other expatriate Canadian citizens who were concerned about the issue. I still consider Outremont in Montreal to be my riding, so I contacted Thomas Mulcair, whom I consider to be my Member of Parliament, to protest my inability to vote. I also signed the petition to protest this issue which is addressed to the Government of Canada and is attached as Exhibit A to the affidavit of Gillian Frank.

28. 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 Ithaca, in the State of New)
York, United States of America, this)
10th day of April, 2012)


A Commissioner, etc.)

COLLEEN M CLAUSON
Notary Public, State of New York
No. 4950038
Qualified in Schuyler County
Commission Expires April 27, 2015


JAMIE DUONG