

Motion File No.: M  
Court of Appeal File No.:

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

**GILLIAN FRANK AND JAMIE DUONG**

Responding Party/ Applicants  
(Respondents in appeal)

and

**THE ATTORNEY GENERAL OF CANADA**

Moving Party/Respondent  
(Appellant in appeal)

**NOTICE OF MOTION**

THE APPELLANT, the Attorney General of Canada will make a motion to a single judge of the Court of Appeal on Friday, June 20, 2014, at 10:00 a.m., or as soon after that time as the motion can be heard, at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

BASIS OF APPELLATE COURT'S JURISDICTION: A single judge of the Court of Appeal possesses jurisdiction to hear this motion and to grant a stay of the Judgment of the Court below pending an appeal in this Court, based on subsections 7(2) and 134(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and Rule 63.02(1)(b) of the *Ontario Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

ESTIMATED LENGTH OF ORAL ARGUMENT: One hour and 55 minutes

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## THE MOTION IS FOR:

- a) An order staying paragraphs 1 and 2 of the Judgment of Penny J., dated May 2, 2014, as amended on May 15, 2014 ("Judgment"), pending the outcome of the appeal to this Court, pursuant to Rule 63.02(1)(b) of the *Rules of Civil Procedure*; and,
- b) such further and other relief as this Court may allow.

## THE GROUNDS FOR THE MOTION ARE:

- a) Penny J. declared that subsection 11(d), paragraphs 222(1)(b) & (c), paragraph 223(1)(f), subsection 226(f), the word "temporarily" in section 220, subsection 222(1) and paragraph 223(1)(e) of the *Canada Elections Act* breached the rights of the Applicants under s. 3 of the *Canadian Charter of Rights and Freedoms* ("Charter"), were not saved by s. 1, and declared these provisions to be immediately of no force or effect.
- b) On May 15, 2014, further to the motion of the Applicants, made on consent of the Respondent, the judge read the words "an elector who resides outside Canada" into s. 11(d) of the *Canada Elections Act*.
- c) This Court has the discretion to stay paragraphs 1 and 2 of the Judgment pursuant to Rule 63.02(1)(b) of the *Rules of Civil Procedure*.
- d) There are serious issues to be tried, including the constitutionality of the provisions struck by Penny J. and whether Penny J. erred in refusing to suspend his declaration of constitutional invalidity because he found no election was "anticipated within 12 months", improperly foreclosing the opportunity for the Respondent to seek appellate guidance, and preventing Parliament from fashioning its own remedy.
- e) Irreparable harm will be suffered if the impugned provisions of the Judgment of the Court below are not stayed: the public interest in the proper and fair administration of elections will suffer irreparable harm including unfairness and uncertainty in the operation of the *Canada Elections Act* in four by-elections to be held on June 30, 2014, in any future by-elections and in a General Election, if one were to be held prior to the determination of the appeal by this Court.
- f) The balance of convenience favours granting a stay.
- g) Prejudice to the public interest, to the integrity of Canada's electoral regime and to the validity of the results of any elections held, and to the proper administration of justice would necessarily result if the stay

is not granted. A stay will maintain the proper administration of justice by permitting full appellate review of a decision rendered at first instance before it applies to by-elections to be held on June 30, 2014.

- h) Sections 7(2) and 134(2) of the *Courts of Justice Act*, Rule 63.02(1)(b) of the *Rules of Civil Procedure*.
- i) Such further and other grounds as counsel may advise and this Court may allow.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- i) The Affidavit of Dr. Munroe Eagles;
- ii) The Judgment of Penny J., dated May 2 and 15, 2014;
- iii) Reasons for Judgment of Penny J., dated May 2, 2014 and amended May 15, 2014; and
- iv) Such further and other evidence as counsel may advise and this Court may permit.

June 2, 2014

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(Respondents in Appeal)

AND

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**COURT OF APPEAL FOR ONTARIO**

Proceeding Commenced at Toronto

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