

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)**

BETWEEN:

GILLIAN FRANK AND JAMIE DUONG

APPELLANTS

AND

ATTORNEY GENERAL OF CANADA

RESPONDENT

AND

**ATTORNEY GENERAL OF NOVA SCOTIA,
ATTORNEY GENERAL OF QUEBEC,
CANADIAN AMERICAN BAR ASSOCIATION,
CANADIAN EXPAT ASSOCIATION,
DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS, UNIVERSITY
OF TORONTO FACULTY OF LAW
CANADIAN CIVIL LIBERTIES ASSOCIATION
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION, and
METRO TORONTO CHINESE AND SOUTHEAST ASIAN LEGAL CLINIC**

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(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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PARTS I AND II – OVERVIEW AND POSITION ON THE QUESTIONS IN ISSUE

1. The David Asper Centre for Constitutional Rights (“Asper Centre”) submits that the impugned provisions violate section 3 of the *Canadian Charter of Rights and Freedoms* and that the Respondent has failed to discharge its burden to justify the violation under section 1.

2. The Respondent’s rationale for restricting the franchise to resident citizens (and exceptional non-residents) is misleadingly presented as a pressing and substantial objective for breaching a *Charter* right. It is actually an attempt to redefine the meaning and scope of the section 3 right to vote in a way that disqualifies non-resident citizens.

3. The Respondent’s conception of the right to vote is incompatible with the section 3 jurisprudence of this Court. Rather than explicitly challenge this Court’s definition of voting eligibility under section 3, the Respondent and the majority of the Court of Appeal apparently concede the section 3 violation, but then transpose their definitional argument to section 1.

4. The displacement of an argument about the meaning and scope of section 3 to the *Oakes* test is not benign. It has the effect of distorting the *Oakes* test at the outset and at each subsequent step of the section 1 analysis. These distortions flow inexorably and irremediably from the initial error of recasting an argument about the purpose and scope of section 3 as a pressing and substantial objective for violating section 3. The Asper Centre submits that this Court should resist this displacement and find that the proposed ‘social contract’ objective is insufficiently important to justify a violation of the right to vote under section 1.

5. The Asper Centre accepts the facts as set out in the parties’ facts. The Asper Centre takes no position on disputed facts.

PART III – STATEMENT OF ARGUMENT

A. The ‘social contract’ objective collapses the means-end analysis necessary to meaningful proportionality review

6. The majority of the Ontario Court of Appeal accepted “strengthening the social contract” as a pressing and substantial objective. It described its version of the contract as “preserving the

connection between citizens' obligation to obey the law and their right to elect the lawmakers."¹ It found that permitting all non-resident citizens to vote "would erode the social contract and undermine the legitimacy of the laws."²

7. The Asper Centre submits that this 'social contract', or what the Respondent describes as "the mutuality and reciprocity of rights and responsibilities,"³ can be boiled down to the following propositions: the democratic legitimacy of governance requires that those who are subject to law exercise a right to choose the lawmakers. In order to preserve the legitimacy of laws, the right to vote should be confined to those citizens who are not only subject to law, but *sufficiently* subject to law. Sufficiency is measured in quantitative terms. Citizens who reside outside Canada are not, as a class, sufficiently subject to law. Therefore, they should not vote.

8. Neither the Court of Appeal nor the Respondent addressed this Court's many warnings about the dangers of allowing governments to justify *Charter* infringements based on overly general statements of legislative purpose. These dangers are readily apparent here.

9. The social contract account of legitimacy the Respondent invokes is a contested theoretical construct; it is neither a legal principle nor a policy aim. Before accepting it, a court would need, at a minimum, to address the following: the merits of the social contract as metaphor to explain the legitimacy of governance through law compared to other political theories that explain legitimacy differently; the viability of one particular version of the social contract's parties and terms, as against a proliferation of alternatives presented by various classical and contemporary social contract theorists; and the proposition articulated by Iacobucci J. in *Vriend* that the Constitution *is* the legal instantiation of the Canadian social contract.⁴

10. Neither the Court of Appeal nor the Respondent undertake any of these tasks. Having endorsed promotion of an idiosyncratic version of the 'social contract' as pressing and substantial, the Court of Appeal and the Respondent then purport to test the means used to

¹ Court of Appeal Decision at para. 93.

² Court of Appeal Decision at para. 6.

³ Respondent's Factum at para. 55.

⁴ *Vriend v. Alberta*, [1998] 1 S.C.R. 493 at para. 135. See also *R. v. Butler*, [1992] 1 S.C.R. 452 at p. 492, where Sopinka J. found that individual freedoms in the *Charter* "form the basis of our social contract"; cited with approval by Arbour J. in *R. v. Malmo-Levine*; *R. v. Caine*, [2003] 3 S.C.R. 571, 2003 SCC 74 at para. 241.

promote it for rationality and necessity. This process normally calls for empirical evidence that the impugned provisions are conducive to the desired end and that other less infringing options would not achieve it. However, as explained below, the nature of the proposed ‘social contract’ objective collapses the means-end analysis that is essential to meaningful proportionality review.

11. On the one hand, the ‘social contract’ is a concept so general and abstract that it “provide[s] no meaningful check on the means deployed to achieve it: almost any challenged provision will likely be rationally connected to a very broadly stated purpose.”⁵

12. On the other hand, narrowing the definition of the social contract to make it tractable runs into the problem that “the distinction between ends and means may be lost and the statement of purpose will effectively foreclose any separate inquiry into the connection between them.”⁶

13. Thus, the denial of the right to vote to citizens who have been non-resident for five years or more *by definition* strengthens the social contract objective, because such citizens are defined as being insufficiently subjected to law (“largely not governed by the Canadian legal system”).⁷ Exceptions for non-resident soldiers, diplomats and others are similarly framed as strengthening the social contract objective *by definition*, with both the Respondent and the Court of Appeal emphasizing legal obligations that are unique to these non-resident citizens.⁸ Once again, the objective (limiting the right to vote to citizens sufficiently subjected to law) and the means (the selection of those citizens who are sufficiently subjected to law) are mutually defined.

14. When it is difficult to specify an objective that is neither too vague on the one hand, nor collapses into the means on the other, it signals that the legislative objective is not to produce effects or outcomes apart from the measure itself. Instead, the function of the legislation is to

⁵ *R. v. Moriarity*, [2015] 3 S.C.R. 485, 2015 SCC 55 at para. 28; *Carter v. Canada (Attorney General)*, [2015] 1 S.C.R. 331, 2015 SCC 5 at para. 77.

⁶ *Moriarity*, *supra* at para. 28; *Carter*, *supra* at para. 76; *R. v. K.R.J.*, 2016 SCC 31 at para. 63 (applied to the section 1 context).

⁷ Court of Appeal Decision at para. 115.

⁸ Respondent’s Factum at para. 74 (“soldiers, diplomats, and others who are living abroad in service of Canada... bear a much more focussed and heavy responsibility directly resulting from the decisions of elected officials”); Court of Appeal Decision at para. 143 (“military personnel may be tried for criminal offences committed outside Canada by virtue of s. 67 of the *National Defence Act*, R.S.C. 1985, c. N-5, and similarly, an offence committed by federal public service employees posted abroad may be deemed to have been committed in Canada by virtue of s. 7(4) of the *Criminal Code*”).

convey a conception of a right or value that is embedded in what the *Oakes* test describes as the means.

15. At minimum, such ‘expressive’, as opposed to ‘instrumental’, objectives call for a cautious approach under section 1, to ensure that Parliament cannot “use lofty objectives to shield legislation from *Charter* scrutiny.”⁹ In what follows, the Asper Centre will argue that the problematic nature of the ‘social contract’ objective in this case cannot be cured and should be rejected at the ‘pressing and substantial objective’ stage.

B. The ‘social contract’ argument is about the meaning and scope of citizens’ right to vote under section 3, not the advancement of an independent objective

16. The Asper Centre agrees that in a democratic political system, the legitimacy or force of the law, and of governance more generally, hinges on participation by the people, through voting. This raises the question of who ‘the people’ are.

17. The metaphor of the ‘social contract’ first emerged in an era where citizenship and residence rarely diverged. Prior to the phenomenon of mass migration, virtually all citizens were residents and all residents were citizens. The democratic principle that the legitimacy of laws hinges on the political assent of ‘the people’ had no need to differentiate citizenship from residence in constituting ‘the people’.

18. The contemporary ubiquity of non-citizen residents and non-resident citizens compels attention to the difference. The fit between citizenship and residence has been loosened. This was certainly apparent in 1982 with the inclusion of section 6 in the *Charter*, which recognizes the presence of permanent residents in Canada.

19. If one contends that the state’s legal jurisdiction over *territory* drives the right to political participation, then residence on that territory (by citizens and non-citizens) should regulate the scope of the franchise. If, however, formal membership in the *polity* drives the right to participation, then citizenship status (of residents and non-residents) should regulate the scope of

⁹ *Sauvé v. Canada (Chief Electoral Officer)*, [2002] 3 S.C.R. 519, 2002 SCC 68 (“*Sauvé*”) at para. 16.

the franchise. If both are operative, then one must explain why citizenship and residence are each necessary but individually insufficient conditions for the franchise.

20. Section 3 of the *Canadian Charter of Rights and Freedoms* prescribes citizenship status, and only citizenship status, to regulate the scope of the franchise. Courts have defined the purpose of section 3, in accordance with its clear wording, as granting “every citizen” the right to play a meaningful role in the selection of elected representatives.¹⁰ The Respondent’s section 1 argument tacitly presents both citizenship status *and* residence as necessary conditions for the exercise of voting rights under section 3, without providing a plausible account of why the text of section 3 would omit one of two necessary conditions for the franchise.

21. The social contract argument can only be understood *not* as a reason to override citizens’ right to vote in order to achieve an objective independent of the right, but rather, as a basis for reinterpreting the right itself as excluding a class of non-resident citizens from the franchise. In other words, the argument implicitly rejects political participation by all formal members of the polity (i.e. citizenship) as sufficient to legitimate governance and the obligation to obey law.

C. The Respondent’s alternative conception of the right to vote is inconsistent with this Court’s jurisprudence on the meaning and scope of section 3

22. The ‘social contract’ argument advanced by the Respondent purports to ground the democratic legitimacy of governance in the participation of only those citizens who are also sufficiently subject to Canadian law as defined by the impugned provisions (i.e. residents in Canada; non-residents of up to five years who intend to resume residence; and certain specified long-term non-residents).

23. Since all citizens are subject to Canadian prescriptive jurisdiction on the basis of territoriality *or* nationality, subjection to law should be redundant. The Court of Appeal and the Respondent try to avoid this problem by introducing a quantitative sufficiency requirement. Non-resident citizens are subject to Canadian laws, they concede, but the “impact” of these laws

¹⁰ *Haig v. Canada*, [1993] 2 S.C.R. 995 at p. 1031; *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912, 2003 SCC 37 at para 25.

on non-residents is diminished,¹¹ essentially because they are not subject to Canada's territorial jurisdiction.

24. The Court of Appeal and the Respondent do not justify their preference for a quantitative over a qualitative measure of subjection to law, or even explain whether one measures quantitative subjection to law by weight, number, enforceability, temporality, or otherwise. Indeed, various measures of sufficiency are employed to justify the exclusion of some, and the inclusion of other, non-resident citizens. The exclusion of non-residents generally is justified based on their "lesser legal responsibilities",¹² or their "fewer legal responsibilities",¹³ or because their legal responsibilities are "different and less onerous".¹⁴ The re-inclusion of soldiers, diplomats and other non-residents is then justified based on their "more focused and heavy" legal responsibilities.¹⁵

25. In either case, whether a citizen is 'sufficiently' subject to law is determined by reference to the *de facto* application of Parliament's laws. The Court is thus called upon to evaluate the landscape of laws enacted by Parliament in order to decide whether, for various classes of citizens, the sufficient subjection threshold is met. For non-resident citizens generally, we are told, it is not. For non-resident soldiers, diplomats and certain others, it is. In this sense, the 'social contract' argument advanced by the Respondent calls upon the Court to define the boundaries of participation in a democracy not according to whether citizens are subject to law (clearly, they are), but rather, according to how much and/or what kind of law Parliament has decided to subject them to.

26. This leads to the troubling conclusion that the constitutional right to the franchise varies according to the fluctuating legislative and policy choices made by the government of the day. For example, the Respondent invokes the fact that Parliament does not tax non-resident citizens on worldwide income to support the idea that they are less subject to law than resident citizens.¹⁶

¹¹ Court of Appeal Decision at para. 138.

¹² Respondent's Factum at para. 62.

¹³ Respondent's Factum at para. 65.

¹⁴ Respondent's Factum at para. 68.

¹⁵ Respondent's Factum at para. 74.

¹⁶ Respondent's Factum at paras. 66, 70.

This would suggest that if Canada decides to follow the United States and tax Canadians worldwide on the basis of citizenship, non-resident citizens ought to acquire the *Charter* right to vote – but lose it again if the policy is reversed. In effect, the Respondent and the Court of Appeal argue that Parliament may rely on the effect on citizens of its own choices about the scope of Canadian laws as a justification to deny further participation in lawmaking, and to override a constitutional right.

27. The Respondent misrepresents *Sauvé's* dictum regarding the relationship between the franchise and the duty to obey the law.¹⁷ The Court in *Sauvé* invokes the duty to obey the law and then explains why a failure to obey law does not justify withdrawing the right to vote. The argument recognizes that citizens as such are subject to law (and obliged to obey it) as a qualitative fact.¹⁸ It lends no support to the Respondent's attempt to correlate the right to vote to a quantitative measure of the laws that the citizen must obey.

28. Because they concede the violation of section 3, the Respondent and the majority of the Court of Appeal do not articulate the purpose served by stipulating citizenship as a necessary condition for the constitutional right to vote. Skipping over an account of *why* section 3 states that citizens as such possess the right to vote, in favour of an exclusive focus on why only resident citizens should vote, makes invisible the harms to democracy and to the Appellants that ensue from depriving a class of citizens of their section 3 right to vote.

29. The Respondent's argument would call into question the legitimacy of laws affecting citizens who are denied the franchise. If citizenship as such does not suffice to secure individuals as parties to the 'social contract' for purposes of the franchise, it is not apparent why it suffices to ground nationality jurisdiction. If, as the Respondent submits, the basis for the legitimacy of laws is 'sufficient subjection to law' by voters, then Parliament arguably lacks legitimacy to legislate extraterritorially in respect of non-resident citizens on the basis of nationality jurisdiction unless those citizens have a say in Parliament's laws.

¹⁷ Respondent's Factum at para. 64.

¹⁸ *Sauvé, supra* at paras. 31-32.

30. To the extent that the Respondent relies on the validity of provincial residence requirements for voting in provinces and territories, the analogy is inappropriate. There is no available provincial citizenship status to signify formal membership in the provincial polity. In the absence of status, residence operates to denote membership. Reliance on provincial residence to regulate the provincial franchise fails as precedent in support of a residence requirement for the national franchise where citizenship status exists and is stipulated under section 3.

D. An unconvincing reason why a right is not violated should not be converted into a justification for violating the right under section 1

31. Because the ‘social contract’ objective is properly understood as an argument about the scope and meaning of section 3, this Court should reject the Respondent’s attempt to advance this same argument under cover of section 1. This gambit is unacceptable in part “because it would justify the law upon the very basis upon which it is attacked for violating” the right.¹⁹

32. Here, the Respondent does not offer an objective based on values that are independent of and therefore in possible competition with the values underlying section 3. Rather, the Respondent offers an alternative conception of the legitimating function of voting, one grounded in a narrower conception of the scope of citizen participation than the one expressed by this Court in its section 3 jurisprudence.

E. The nature of the objective distorts the evaluation of rational connection, minimal impairment and the final balancing of benefits versus harms

33. The Respondent does not simply argue that the impugned provisions are demonstrably justified. It goes one step further in arguing that any change to the means chosen, for instance to the five-year threshold, should be left to Parliament.²⁰ This represents a striking and radical departure from the “stringent justification standard” that is required in cases of denial of the right to vote.²¹ It turns the question posed by the minimal impairment step of the *Oakes* test from

¹⁹ *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 at p. 352

²⁰ Respondent’s Factum at para. 99.

²¹ *Sauvé*, *supra* at para. 14.

whether it has been demonstrated that the provision impairs the right as little as possible, to whether Parliament thinks it has.

34. Once the objective of restricting the franchise to citizens sufficiently subject to law (residents) is accepted as pressing and substantial, the minimal impairment test is confined to refining the temporal determination of how long a citizen can be absent before he or she is considered a non-resident and thus no longer sufficiently subjected to law.

35. Given that the five-year rule operationalizes sufficiency, the connection between objective and 'means' is hermetically sealed. A rule that attempts to separate the temporarily absent from the non-resident cannot fail to be rationally connected to the objective of restricting the franchise to resident citizens. It simply becomes a logical truth that if Parliament seeks to adopt a residence-based conception of sufficient subjection to Canadian law as the definition of legitimacy, a temporal rule distinguishing resident from non-resident will be rationally connected to that objective.

36. The five-year limit is not intended to minimally impair non-resident citizens' right to vote. Non-resident citizens are defined (via the social contract) as insufficiently subject to law to possess the right to vote. Instead, the five-year limit tells us what the Respondent means by 'sufficiently' as a precondition to possessing the right. It is a means of managing the empirical uncertainty of identifying the true rights holder, namely the resident citizen.

37. One could, in principle, ask whether requiring non-resident citizens to resume residence minimally impairs non-resident citizens' right to vote under section 3, but the answer is given by the objective: the 'pressing and substantial objective' of advancing the social contract has already determined that they do not, as *non-resident* citizens, possess a right to vote in the first place. The only means of reclaiming the right is to cease being a non-resident.

38. Similarly, treating promotion of the social contract (by disenfranchising non-resident citizens) as a pressing and substantial objective, leaves little to balance at the final proportionality stage of the *Oakes* test. Conceding the section 3 infringement enables the section 1 argument to proceed with no attention to the gravity of the breach itself. The cost to non-

resident citizens and to the legitimacy of our democratic system of governance of denying them the franchise is not outweighed, it is refuted, by the alleged benefit to the legitimacy of our democratic system of governance that accrues from denying the franchise to those insufficiently subject to law. In effect, the Appellants' desire to vote is treated as little more than a whim of misguided citizens who fail to grasp the correct concept of legitimacy underwriting the right to vote.

39. The Asper Centre submits that Respondent's argument expresses a conception of the purpose and scope of the right to vote under section 3 that is inconsistent with jurisprudence of this Court, and this Court should reject it. Further, this Court should resist its reintroduction under section 1, as doing so distorts the *Oakes* test and disables the test from performing its task of subjecting justifications for rights violations to rigorous, principled scrutiny.

PARTS IV AND V – ORDER SOUGHT AND REQUEST FOR ORAL ARGUMENT

40. The Asper Centre requests that there be no order of costs for or against it. The Asper Centre requests that it be allowed 10 minutes to present oral argument at the hearing of the appeal. The Asper Centre takes no position on the outcome of the appeal but asks that it be determined in accordance with the foregoing submissions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Thursday, December 8, 2016



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PART VI – AUTHORITIES

Cases	Paragraphs in factum
<i>Carter v. Canada (Attorney General)</i> , [2015] 1 S.C.R. 331, 2015 SCC 5	11, 12
<i>Figueroa v. Canada (Attorney General)</i> , [2003] 1 S.C.R. 912, 2003 SCC 37	20
<i>Haig v. Canada</i> , [1993] 2 S.C.R. 995	20
<i>R. v. Big M Drug Mart Ltd.</i> , [1985] 1 S.C.R. 295	31
<i>R. v. Butler</i> , [1992] 1 S.C.R. 452	9
<i>R. v. K.R.J.</i> , 2016 SCC 31	12
<i>R. v. Malm-Levine; R. v. Caine</i> , [2003] 3 S.C.R. 571, 2003 SCC 74	9
<i>R. v. Moriarity</i> , [2015] 3 S.C.R. 485, 2015 SCC 55	11, 12
<i>Sauvé v. Canada (Chief Electoral Officer)</i> , [2002] 3 S.C.R. 519, 2002 SCC 68	15, 27, 33
<i>Vriend v. Alberta</i> , [1998] 1 S.C.R. 493	9

PART VII - LEGISLATION

1. *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, at s. 6; LOI CONSTITUTIONNELLE DE 1982*

Guarantee of Rights and Freedoms

Garantie des droits et libertés

Rights and freedoms in Canada

Droits et libertés au Canada

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

1. La *Charte canadienne des droits et libertés* garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.

.....

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Democratic Rights

Droits démocratiques

Democratic rights of citizens

Droits démocratiques des citoyens

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

3. Tout citoyen canadien a le droit de vote et est éligible aux élections législatives fédérales ou provinciales.

.....

.....

Mobility Rights

**Liberté de circulation et d'établissement
Liberté de circulation**

Mobility of citizens

6. (1) Tout citoyen canadien a le droit de demeurer au Canada, d'y entrer ou d'en sortir.

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

Rights to move and gain livelihood

Liberté d'établissement

(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

(2) Tout citoyen canadien et toute personne ayant le statut de résident permanent au Canada ont le droit :

(a) to move to and take up residence in any

a) de se déplacer dans tout le pays et d'établir leur résidence dans toute province;
b) de gagner leur vie dans toute province.

province; and
(b) to pursue the gaining of a livelihood in any province.

Limitation

(3) The rights specified in subsection (2) are subject to

(a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and

(b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

Affirmative action programs

(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

Restriction

(3) Les droits mentionnés au paragraphe (2) sont subordonnés :

a) aux lois et usages d'application générale en vigueur dans une province donnée, s'ils n'établissent entre les personnes aucune distinction fondée principalement sur la province de résidence antérieure ou actuelle;

b) aux lois prévoyant de justes conditions de résidence en vue de l'obtention des services sociaux publics.

Programmes de promotion sociale

(4) Les paragraphes (2) et (3) n'ont pas pour objet d'interdire les lois, programmes ou activités destinés à améliorer, dans une province, la situation d'individus défavorisés socialement ou économiquement, si le taux d'emploi dans la province est inférieur à la moyenne nationale.

2. *Canada Elections Act* (S.C. 2000, c. 9) S.C. 2000, c.9 ss. 3, 6, 11, 191(d), 194(4), 222(2), 223(1); *Loi électorale du Canada* (L.C. 2000, c. 9) L.C. 2000, c. 9

Persons qualified as electors

3 Every person who is a Canadian citizen and is 18 years of age or older on polling day is qualified as an elector.

.....

Persons entitled to vote

6 Subject to this Act, every person who is qualified as an elector is entitled to have his or her name included in the list of electors for the polling division in which he or she is ordinarily resident and to vote at the polling station for that polling division.

.....

Part 11

11 Any of the following persons may vote in accordance with Part 11:

- (a) a Canadian Forces elector;
- (b) an elector who is an employee in the federal public administration or the public service of a province and who is posted outside Canada;
- (c) a Canadian citizen who is employed by an international organization of which Canada is a member and to which Canada contributes and who is posted outside Canada;
- (d) a person who has been absent from Canada for less than five consecutive years and who intends to return to Canada as a resident;
- (e) an incarcerated elector within the meaning of that Part; and
- (f) any other elector in Canada who wishes to vote in accordance with that Part.

.....

Personnes qui ont qualité d'électeur

3 A qualité d'électeur toute personne qui, le jour du scrutin, est citoyen canadien et a atteint l'âge de dix-huit ans.

.....

Personnes qui ont le droit de voter

6 Sous réserve des autres dispositions de la présente loi, toute personne qui a qualité d'électeur a le droit de faire inscrire son nom sur la liste électorale pour la section de vote où elle réside habituellement et de voter au bureau de scrutin établi pour cette section de vote.

.....

Partie 11

11 Peuvent voter dans le cadre de la partie 11 :

- a) les électeurs des Forces canadiennes;
- b) les électeurs qui appartiennent à l'administration publique fédérale ou d'une province en poste à l'étranger;
- c) les électeurs qui sont en poste à l'étranger auprès d'organismes internationaux dont le Canada est membre et auxquels il verse une contribution;
- d) les électeurs qui sont absents du Canada depuis moins de cinq années consécutives et qui ont l'intention de revenir résider au Canada;
- e) les électeurs incarcérés au sens de cette partie;
- f) tout autre électeur au Canada qui désire se prévaloir des dispositions de cette partie.

.....

Canadian Forces electors

191 Any of the following persons is a Canadian Forces elector if he or she is qualified as an elector under section 3 and is not disentitled from voting at an election under section 4:

- (a) a member of the regular force of the Canadian Forces;
- (b) a member of the reserve force of the Canadian Forces on full-time training or service or on active service;
- (c) a member of the special force of the Canadian Forces; and
- (d) 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.

.....

Completion on enrolment, etc.

194 (1) In order to vote under this Division, a person shall, without delay after becoming an elector described in paragraph 191(a), (c) or (d) by virtue of his or her being enrolled in or hired by the Canadian Forces, complete a statement of ordinary residence in the prescribed form that indicates

- (a) his or her surname, given names, sex and rank;
- (b) his or her date of birth;
- (c) the civic address of his or her place of ordinary residence in Canada immediately before the enrolment or hiring; and
- (d) his or her current mailing address.

Qualités requises et droit de vote des électeurs

191 Sont des électeurs des Forces canadiennes les personnes qui ont la qualité d'électeur en vertu de l'article 3 et que l'article 4 ne rend pas inhabiles à voter et qui sont :

- a) membres de la force régulière des Forces canadiennes;
- b) membres de la force de réserve des Forces canadiennes qui sont à l'instruction ou en service à temps plein, ou en service actif;
- c) membres de la force spéciale des Forces canadiennes;
- d) employées, à l'étranger, par les Forces canadiennes à titre de professeurs ou à titre de membres du personnel de soutien administratif dans les écoles des Forces canadiennes.

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Déclaration de résidence habituelle

Établissement lors de l'enrôlement

194 (1) Pour avoir le droit de voter en vertu de la présente section, toute personne doit, sans délai après être devenue un électeur visé aux alinéas 191a), c) ou d) par son enrôlement dans les Forces canadiennes ou son embauche par celles-ci, établir une déclaration de résidence habituelle, selon le formulaire prescrit, indiquant :

- a) ses nom, prénoms, sexe et grade;
- b) sa date de naissance;
- c) l'adresse municipale du lieu de sa résidence habituelle au Canada au moment de son enrôlement ou de son embauche;

Completion on becoming ordinarily resident

(2) A person who cannot complete a statement of ordinary residence under subsection (1) because he or she did not have a place of ordinary residence in Canada when enrolled in or hired by the Canadian Forces shall, without delay after being able to indicate a place referred to in paragraph (4)(a) or (b) as his or her place of ordinary residence, complete a statement of ordinary residence in accordance with subsection (1), indicating that place as his or her place of ordinary residence.

Members of Canadian Forces not entitled to vote

(3) A person who was not qualified as an elector at an election when enrolled in or hired by the Canadian Forces shall, without delay after becoming qualified, complete a statement of ordinary residence in accordance with subsection (1) that indicates a place of ordinary residence described in subsection (4).

Change of ordinary residence, etc.

(4) An elector may amend the information in his or her statement of ordinary residence and may indicate as a place of ordinary residence the civic address of

(a) the place of ordinary residence of the spouse, the common-law partner, a relative or a dependant of the eligible elector, 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 being enrolled in or hired by the Canadian Forces;

(b) the place where the member is residing by reason of his or her performance of services as a member of the Canadian Forces; or

(c) the elector's place of ordinary residence immediately before being enrolled in or hired by the Canadian Forces.

d) son adresse postale actuelle.

Acquisition de résidence canadienne

(2) La personne qui ne peut établir une déclaration de résidence habituelle visée au paragraphe (1) parce qu'elle n'avait pas de lieu de résidence habituelle au Canada avant son enrôlement dans les Forces canadiennes ou son embauche par celles-ci doit l'établir dès qu'elle peut indiquer tout lieu visé aux alinéas (4)a) ou b) comme lieu de résidence habituelle.

Membres des Forces canadiennes qui sont inhabiles à voter

(3) Les personnes qui n'ont pas qualité d'électeur lors de leur enrôlement dans les Forces canadiennes ou leur embauche par celles-ci doivent établir la déclaration visée au paragraphe (1) dès qu'elles acquièrent cette qualité, indiquant un lieu de résidence habituelle conformément au paragraphe (4).

Modification du lieu de la résidence habituelle

(4) L'électeur peut modifier sa déclaration de résidence habituelle en indiquant comme lieu de résidence habituelle l'adresse municipale :

a) soit de la résidence habituelle de son époux, de son conjoint de fait, d'un parent ou d'une personne à sa charge, d'un parent de son époux ou de son conjoint de fait ou d'une personne avec laquelle il demeurerait si ce n'était de son enrôlement dans les Forces canadiennes ou de son embauche par celles-ci;

b) soit du lieu où il réside à cause du service qu'il accomplit à titre de membre des Forces canadiennes;

c) soit du lieu de sa résidence habituelle avant son enrôlement ou son embauche.

Register of electors

222 (1) The Chief Electoral Officer shall maintain a register of electors who are temporarily resident outside Canada in which is entered the name, date of birth, civic and mailing addresses, sex and electoral district of each elector who has filed an application for registration and special ballot and who

(a) at any time before making the application, resided in Canada;

(b) has been residing outside Canada for less than five consecutive years immediately before making the application; and

(c) intends to return to Canada to resume residence in the future.

Exception

(2) Paragraph (1)(b) does not apply to an elector who is

(a) employed outside Canada in the federal public administration or the public service of a province;

(b) employed outside Canada by an international organization of which Canada is a member and to which Canada contributes;

(c) a person who lives with an elector referred to in paragraph (a) or (b); or

(d) a person who lives with a member of the Canadian Forces or with a person referred to in paragraph 191(d).

Inclusion in register

223 (1) An application for registration and special ballot may be made by an elector. It shall be in the prescribed form and shall

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Registre

222 (1) Le directeur général des élections tient un registre des électeurs résidant temporairement à l'étranger où il inscrit les nom, date de naissance, sexe, adresses municipale et postale et circonscription des électeurs qui ont présenté une demande d'inscription et de bulletin de vote spécial et qui satisfont aux conditions suivantes :

a) avoir résidé au Canada antérieurement à la présentation de la demande;

b) résider à l'étranger depuis moins de cinq années consécutives au moment de la présentation de la demande;

c) avoir l'intention de rentrer au Canada pour y résider.

Exceptions

(2) L'alinéa (1)b) ne s'applique pas aux électeurs qui :

a) appartiennent à l'administration publique fédérale ou d'une province en poste à l'étranger;

b) sont, à l'étranger, au service d'organismes internationaux dont le Canada est membre et auxquels il verse une contribution;

c) demeurent avec des personnes visées aux alinéas a) ou b);

d) demeurent avec des membres des Forces canadiennes ou des personnes visées à l'alinéa 191d).

Demande d'inscription

223 (1) La demande d'inscription et de bulletin de vote

spécial est faite selon le formulaire prescrit et doit contenir

les éléments suivants, en ce qui concerne

include

- (a) satisfactory proof of the elector's identity;
- (b) if paragraph 222(1)(b) does not apply in respect of the elector, proof of the applicability of an exception set out in subsection 222(2);
- (c) the elector's date of birth;
- (d) the date the elector left Canada;
- (e) the address of the elector's last place of ordinary residence in Canada before he or she left Canada or the address of the place of ordinary residence in Canada of the spouse, the common-law partner or a relative of the elector, a relative of the elector's 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 his or her residing temporarily outside Canada;
- (f) the date on which the elector intends to resume residence in Canada;
- (g) the elector's mailing address outside Canada; and
- (h) any other information that the Chief Electoral Officer considers necessary to determine the elector's entitlement to vote or the electoral district in which he or she may vote.

Optional information

(2) In addition to the information specified in subsection (1), the Chief Electoral Officer may request that the elector provide other information that the Chief Electoral Officer considers necessary for implementing agreements made under section 55, but the elector is not required to provide that information.

l'électeur :

- a) une preuve suffisante de son identité;
- b) si l'alinéa 222(1)b ne s'applique pas à lui, une preuve du fait qu'une exception prévue au paragraphe 222(2) s'applique à lui;
- c) sa date de naissance;
- d) la date à laquelle il a quitté le Canada;
- e) l'adresse soit du lieu de sa résidence habituelle au Canada avant son départ pour l'étranger, soit du lieu de la résidence habituelle au Canada de son époux, de son conjoint de fait, d'un parent, d'un parent de son époux ou de son conjoint de fait, d'une personne à la charge de qui il est ou de la personne avec laquelle il demeurerait s'il ne résidait pas temporairement à l'étranger;
- f) la date à laquelle il a l'intention de rentrer au Canada pour y résider;
- g) son adresse postale à l'étranger;
- h) tout autre renseignement que le directeur général des élections estime nécessaire pour déterminer si l'électeur est habile à voter ou la circonscription dans laquelle il peut voter.

Renseignements dont la communication est facultative

(2) En sus des renseignements prévus au paragraphe (1), le directeur général des élections peut demander à l'électeur de lui communiquer tous autres renseignements qu'il estime nécessaires à la mise en oeuvre d'accords qu'il peut conclure au titre de l'article 55. La communication de ces renseignements est toutefois facultative.