

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**Amelia Penney-Crocker, Parker Boot-Quackenbush, Khadijat Folasayo Dairo,
Catherine He, Tharan D'Silva, Katie Yu, Diego Christiansen-Barker, Lachlan
Brown, Zoey Ann Purves, Jacob Colatosti, Milan Rozotto-Lagos, Oswaldo Paz
Flores, Lauren Handley and Justice for Children and Youth**

Applicants

- and -

THE ATTORNEY GENERAL IN RIGHT OF CANADA

Respondent

NOTICE OF CONSITUTIONAL QUESTION

The Applicants intend to question the constitutional validity of the age requirement set out in section 3 of the *Canada Elections Act*, S.C. 2000, c.9 (the “CEA”). The Applicants seek the following relief in recognition of the rights of all young people to meaningfully participate in the democratic process:

- a. A declaration, pursuant to s. 52(1) of the *Constitution Act, 1982* that age 18 as a minimum age requirement set out in s. 3 of the *Canada Elections Act*, S.C. 2000, c. 9 violates the rights of young Canadians under s. 3, s.2(b) and s. 15 of the *Charter* and cannot be saved by s. 1, rendering it of no force and effect; and
- b. Such further and other relief as counsel may advise and this Honourable Court may deem just.

The question is to be argued on a date to be set by the Registrar, in Toronto.

The following are the materials facts giving rise to the constitutional question and the legal basis:

APPLICATION

OVERVIEW

1. The right to vote is the cornerstone of Canadian democracy. It is constitutionally entrenched by s. 3 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”), which guarantees the right to vote in federal and provincial elections to “[e]very citizen of Canada”. Initially restricted to property-owning men aged 21 and older, voting rights in Canada have been gradually extended to other Canadian citizens such as women, racialized people, indigenous people, inmates, and citizens who live abroad. This progressive enfranchisement was driven by our growing recognition that “every citizen” must include those who may have been excluded from social and political participation; and that they be granted the right to participate in the democratic system that impacts their lives. Minimum voting ages present an unjustifiable restriction on the right of citizens to vote in Canada. Section 3 of the *Canada Elections Act*, S.C. 2000, c. 9 (“*CEA*”) sets the minimum age to vote in federal elections at 18.
2. Amelia Penney Crocker, Parker Boot-Quackenbush, Khadijat Folasayo Dairo, Tharan D’Silva, Katie Yu, Diego Christiansen-Barker, Zoey Ann Purves, Jacob Colatosti, Milan Rozotto-Lagos and Oswaldo Paz Flores are Canadian citizens under the age of 18 who reside in Canada. Catherine He is in the process of obtaining her citizenship and will become a citizen in early 2022. They each want to participate meaningfully in Canadian democracy by exercising their right to vote before age 18. Lachlan Brown and Lauren Handley both turned 18 shortly after the most recent federal election and were denied the ability to vote by mere days or weeks. Despite being subject to Canada’s laws, s. 3 of the *CEA* has denied these applicants and other young people like them the right to vote for

members of parliament who will represent their needs and interests. The individual Applicants are joined in this Application by public interest litigant Justice for Children and Youth (“JFCY”, together the “Applicants”). JFCY is a non-profit legal aid clinic dedicated to advancing the rights and interests of young people in Canada.

3. Denying Canadian citizens under the age of 18 the right to vote is unconstitutional. The minimum voting age set out in s. 3 of the *CEA* violates ss. 3, 15 and 2(b) of the *Charter*, and these violations are not justified under s. 1.
4. Section 3 of the *Charter* guarantees the right to vote to all Canadian citizens without qualification. Age does not operate as an internal limit on voting rights. Instead, any age-based infringement of s. 3 must be demonstrably justified under s. 1 of the *Charter*.
5. Restricting voting rights on the basis of age also violates the s. 15 equality rights of citizens under 18. By denying citizens under 18 the right to vote, s. 3 of the *CEA* reinforces the political exclusion and powerlessness of young people, denies them the most fundamental form of political participation and perpetuates stereotypical and prejudicial attitudes that young people are less capable and less deserving of participating in Canadian democracy through the voting process.
6. While the *Charter* rights to vote under s. 3 and to freedom of expression under s.2(b) are distinct rights, voting is a form of expression and political expression is at the core of s.2(b). Denying people under the age of 18 the right to equal participation in the political process infringes their rights under s. 2(b).
7. The infringements of ss. 3, 15 and 2(b) are not justified under s. 1. Using age as a proxy for cognitive capacity, political competency, political access and responsibility must be grounded in evidence and accord with the actual capacities of citizens under the age of 18.

These qualifications on the voting rights guaranteed under s.3 of the *Charter* are not imposed on citizens over the age of 18. Vague and unsubstantiated assertions about maturity are not enough to justify depriving a large portion of Canadian society their core political right.

8. The minimum voting age of 18, as set out in s. 3 of the *CEA*, is unconstitutional and should be declared of no force and effect.

RELIEF SOUGHT

9. The Applicants seek the following relief in recognition of the rights of all young people to meaningfully participate in the democratic process:
 - a. A declaration, pursuant to s. 52(1) of the *Constitution Act, 1982* that age 18 as a minimum age requirement set out in s. 3 of the *Canada Elections Act*, S.C. 2000, c. 9 violates the rights of young Canadians under s. 3 and s. 15 of the *Charter* and cannot be saved by s. 1, rendering it of no force and effect; and
 - b. Such further and other relief as counsel may advise and this Honourable Court may deem just.

GROUND

The Applicants

10. This Application is brought by Amelia Penney Crocker, Parker Boot-Quackenbush, Khadijat Folasayo Dairo, Catherine He, Tharan D'Silva, Katie Yu, Diego Christiansen-Barker, Lachlan Brown, Zoey Ann Purves, Jacob Colatosti, Milan Rozotto-Lagos,

Oswaldo Paz Flores and Lauren Handley on a private interest basis, and by JFCY on a public interest basis.

11. The individual Applicants are Canadian citizens under the age of 18, or in the case of Lauren Handley and Lachlan Brown were under the age of 18 at the time of the most recent federal election. They each have, or had, a genuine interest in having their voices heard in Canadian democracy by exercising their right to vote before they are 18 years old. They range in age from 12 to 18 years old and reside across Canada – specifically from Nunavut, British Columbia, Alberta, Saskatchewan, Ontario, Quebec, and Nova Scotia. Despite being Canadian citizens who are directly impacted by the decisions of the federal government, these Youth Applicants have been expressly denied the right to vote in federal elections by virtue of their age.
12. Amelia Penney-Crocker is 16 years old from Halifax, Nova Scotia and strongly believes in the power of youth voices to bring change. As an activist, she participates in political groups such as School Strike for Climate Halifax and Climate Strike Canada, and regularly writes to politicians, including weekly letters to the Prime Minister of Canada.
13. Parker EJ Boot-Quackenbush is 16 years old from London, Ontario and has been interested in politics since a young age. They are a passionate advocate for diversity, inclusion, and youth empowerment, participating in social justice and multicultural initiatives at their school.
14. Khadijat Folasayo Dairo is 16 years old from Fort McMurray, Alberta and believes that youth voices should inform public policy and help pave Canada's future. She is deeply involved in her community, participating in her school's student council, the Mayor's Youth Advisory Council, and Plan Canada's Speakers Bureau.

15. Catherine He is 16 years old from Angus, Ontario and is intensely interested in politics and social justice. In addition to founding a youth blog to raise awareness for various social justice issues, she is actively involved in her school community through leading a student vote day, being president of the UNICEF club, and holding executive membership in the Model United Nations.
16. Tharan D'Silva is 12 years old from Richmond Hill, Ontario and believes that youth have intelligent, developed political views that the government must acknowledge. He is passionate about healthcare, climate change, and education, and participates in a social club for kids with autism.
17. Katie Yu is 15 years old from Iqaluit, Nunavut and is committed to raising awareness on climate change, mental health, suicide prevention and racial justice, and how these issues impact the North. She worked as a summer intern at World Wildlife Fund Canada and was a participant of UNICEF Canada's Youth Advocacy Program. She is currently the high school student representative at the Iqaluit District Education Authority.
18. Diego Christiansen-Barker is 17 years old from Campbell River, British Columbia and is passionate about policies regarding climate change, businesses, and education reform. He relies on grassroots activism to advocate for his interests, as he was chair of the British Columbia Youth Council and held leadership roles at the organization Vote 16.
19. Lachlan Brown is 18 years old from Halifax, Nova Scotia and believes that the government cannot arbitrarily deny basic political rights to youth. With parents who work for Members of Parliament, he has always been politically engaged and is currently employed with the Students Commission of Canada.

20. Zoey Ann Purves is 17 years old from Ottawa, Ontario and believes that youth have valuable perspectives on critical issues such as reconciliation and climate change that should be heard. She has voted in mock elections since elementary school, writes for her school's newspaper, and helped run a Black History Month assembly with her school's diversity club.
21. Jacob Colatosi is 16 years old from Hamilton, Ontario and is deeply interested in diplomatic relations and climate change. His work as an ambassador for UNICEF U-Report has shown him how extensive youth's political, social, and economic knowledge is and believes that their voices should not be underestimated.
22. Milan Rozotto-Lagos is 13 years old from Saskatoon, Saskatchewan and believes that voting is the most effective way to engage with government and tackle injustice. She is passionate about climate change and civil rights issues across the world, and has participated in her school's student vote in multiple elections.
23. Oswaldo Andrés Paz Flores is 16 years old from Montréal, Québec and believes that youth have informed political opinions that reflect social change. He is committed to environmental sustainability and is a project lead for Water Access with Eau Secours, a Young Minister of the Environment with Sors de ta bulle, and a member of organizations such as the Blue Communities Project and Oxfam-Québec's Youth and Seat and Youth22 of Lab22 – Social & Environmental Innovations.
24. Lauren Handley is 18 years old from Orillia, Ontario and is deeply passionate about youth mental health, Indigenous rights, and climate justice. She has engaged in volunteer work, working groups, and consultations to the Government of Canada on these issues, including with the Students Commission of Canada and The New Mentality campaign.

25. Justice for Children and Youth is an Ontario-based non-profit community legal aid clinic and child rights organization. JFCY specializes in protecting and advancing the rights of young people facing conflicts within the legal, education, social service, and mental health systems. JFCY provides legal representation to young people in Ontario and advocates for law and policy reform on issues affecting children and youth across Canada.
26. JFCY meets the test for public interest standing set out in *Canada (AG) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45. The violation of the Youth Applicants' s. 3 and s. 15 *Charter* rights by s. 3 of the *CEA* constitutes a serious justiciable issue. As an organization focused on protecting the legal rights and dignity of youth, JFCY holds a genuine interest in ensuring that youth are not denied any rights that they are entitled to. Further, the proposed suit is a reasonable and effective way to bring the issue to court, as JFCY has the capacity to bring this constitutional challenge on behalf of and alongside a vulnerable group who may not otherwise have a means of accessing the courts. Additionally, the participation of JFCY on a public interest basis alongside the Youth Applicants is desirable because of the likelihood that some or all of the Youth Applicants could "age out" over the course of this litigation.

The Progressive Expansion of the Franchise in Canada

27. The *Canada Elections Act* is the federal statute regulating federal elections to the House of Commons. The earliest predecessor to the *CEA* restricted the franchise to a small minority of the population: property-owning males over the age of 21. Among the numerous Canadians who were denied the right to vote by that limited entitlement were women, Indigenous peoples, racial minorities, and members of certain religious denominations

28. The original restrictions of the franchise have given way to evolving recognition of the rights of historically disadvantaged and socially excluded groups of people. For example: some Indigenous people were given the right to vote in 1885; women were granted the right to vote in 1918; the last property qualifications were abolished in 1948; Asian-born Canadian citizens were extended the vote in 1948.
29. The *CEA* was passed in 1960 and further extended the franchise to status Indians living on reserve. In 1970, the *CEA* was amended to lower the minimum voting age from 21 to 18. After the introduction of the *Charter* in 1982, which constitutionalized the right to vote, further restrictions on the franchise were struck down by the courts as unjustified infringements on s. 3, resulting in the extension of the franchise to previously excluded groups such as federally appointed judges (1988), persons under some form of restraint due to their mental disabilities (1993), and incarcerated persons serving sentences of two years or more in (2002).
30. Most recently, in *Frank v Canada (Attorney General)*, 2019 SCC 1 (“*Frank*”), the Supreme Court of Canada declared that denying the right to vote to Canadian citizens who had not been resident in Canada for over five consecutive years constitutes an unjustified infringement of s. 3 of the *Charter*. The Court also emphasized the seriousness of restrictions on the franchise, stating that any limit on the right to vote must be carefully scrutinized and cannot be tolerated without a compelling justification.
31. The statutory disenfranchisement of youth on the basis of the arbitrary age restriction in s. 3 of the *CEA* does not withstand such scrutiny and should be struck down as an unjustifiable barrier to the franchise.

Section 3 of the Canada Elections Act Violates Section 3 of the Charter

32. The minimum voting age set out in the *CEA* violates s. 3 of the *Charter* by categorically denying the right to vote to a subset of Canadian citizens: those under the age of 18. Section 3 of the *Charter* contains no internal limit on the right to vote, express or implied, beyond citizenship. This was affirmed in *Frank*, where the Court held that “the *Charter* tethers voting rights to citizenship, and citizenship alone”. Countervailing concerns, such as ensuring a basic level of cognitive competence, must be addressed at the s. 1 justification stage.

33. Section 3 voting rights must be given a large and liberal interpretation. Denying the right to vote to all young people under 18 is incongruent with the fact that many young people are already granted an array of legal rights and obligations that imply a significant degree of maturity, capacity, and social participation and responsibility. They are trusted to engage in employment, drive vehicles, consent to sex, and pay taxes, among other things—all major areas of law and policy to which they are subject but over which they have no power to influence.

Section 3 of the Canada Elections Act Violates Section 15 of the Charter

34. The minimum voting age of 18 set out in s. 3 of the *CEA* discriminates against Canadian citizens under the age of 18 on the basis of the enumerated ground of age, contrary to s. 15 of the *Charter*, by explicitly requiring that Canadian citizens be “18 years of age or older” in order to be qualified as an elector and vote in federal elections.

35. This distinction is discriminatory because (1) it perpetuates the disadvantage young people face with respect to their political powerlessness and intergenerational inequity; (2) it

perpetuates stereotypical attitudes that young people are not cognitively capable of making rational, informed decisions; and (3) it promotes prejudicial attitudes that young people and their interests, particularly their political interests, are of lesser value to society.

36. Young people under 18 are a uniquely vulnerable group: because they are unable to hold their elected representatives accountable at the polls or run for elected office, their self-identified interests receive less protection from government. Maintaining the minimum voting age at 18 perpetuates the disadvantage young people face by denying them fundamental social democratic participation and access to a foundational means of asserting their interests in society.
37. The minimum voting age of 18 is discriminatory because it sends the unfounded message that Canadian citizens under 18 are less capable of exercising their right to vote than adults. Setting the minimum voting age at 18 perpetuates the stereotypical assumption that all individuals under 18 are less intelligent, less informed, and less rational than adults. This fails to take into account the actual capacities of citizens under 18.
38. Finally, the minimum voting age of 18 is discriminatory because it sends the message that young people and their interests are less deserving of attention and representation in government. Denying young people the right to vote conveys to them and to others that adults do not, and should not, take their perspectives or interests seriously. This reinforces prejudicial views that only serve to further exclude young people from democratic participation in the long term. The exclusion of a class of citizens from a right that is central to citizenship sends a message that the excluded class is of lesser value or worth than those who enjoy the right.

Youth Under the Age of 18 Have the Cognitive Capacity to Vote

39. Cognitive capacity is not a condition of the exercise of the federal franchise by those over the age of 18. Despite this, lack of capacity is often advanced as one of the arguments to justify the disenfranchisement of young people under the age of 18. Advances in our understanding of neuro-science and psychological and cognitive social science evidence from the last twenty years refute this argument. There is increasing consensus in the neuro-scientific and social science literature that the cognitive capacities necessary for voting are present by the age of 14-16, if not younger.
40. Studies demonstrate that adolescents develop adult-level complex reasoning skills by the ages of 14-16, and that voting decisions made by young people of this age would be no less logical than those of adults. In the context of decision-making more broadly, adolescents demonstrate competency equal to adults in the expression, reasonableness, and rationality of their choices, and have the same ability as adults to understand the facts, risks, benefits, and alternatives associated with their choices.
41. The evidence shows that young people develop the cognitive capacity to vote well before turning 18 years old. Setting the minimum voting age at 18 is not grounded in evidence and fails to reflect the actual capacities of adolescents. Young people under 18 have the cognitive skills required to understand and analyze complex political issues, weigh the risks and benefits of political parties' platforms, and make a reasoned voting decision in favour of the candidate who best represents their opinions and interests.

Section 3 of the Canada Elections Act Violates Section 2(b) of the Charter

42. The right to vote and the right to free expression guaranteed under s.2(b) are complementary in the political context. The United Nations *Convention on the Rights of the Child* specifically requires states parties to ensure that children are afforded basic rights of democratic participation in articles 13 to 15. In addition to the right to participate in decisions that affect them under article 12, children are guaranteed the right to freedom of expression under article 13.

The Violations of Sections 3 15 and 2(b) Are Not Justified Under Section 1 of the Charter

43. Setting the minimum voting age at 18 cannot be justified under s. 1 of the *Charter* because it is not rationally connected to its purpose. If the objective is to restrict the right to vote to those citizens who have the cognitive capacity necessary to vote, then setting an age restriction of 18 applies this restriction only to youth in an arbitrary manner and not to people (including adults) who may have actual incapacity. It is also not minimally impairing and the deleterious effects on democracy in general and to citizens under 18 specifically outweigh any salutary effects.

44. An age proxy must accurately reflect current evidence on when voting-relevant cognitive capacities are achieved. The evidence shows that individuals have attained the cognitive capacities used in decision making such as voting by age 14-16, making them just as capable as those aged 18 and over of exercising rational and informed decision-making in the voting context. This neuro-biological and social science evidence is reinforced by growing evidence from jurisdictions around the world that have recognized their obligations under international law to expand the franchise to people under age 18. Within Canada, all of the major federal political parties allow 14-year-olds to join as members and

all members enjoy full participatory rights including the right to vote for prospective candidates in elections and the leaders of the parties.

International Precedents Disprove Assumptions About Youth Voter Behaviours

45. International law supports the view that the voting age eligibility of 18 is an unreasonable restriction on voting rights and therefore not demonstrably justified under s. 1. The *Covenant on Civil and Political Rights* (CCPR) guarantees universal suffrage under article 25 without distinctions, while article 26 sets out the State obligation “that all persons are equal before the law and are entitled to equal protection of the law without discrimination.” Article 12 of the *United Nations Convention on the Rights of the Child* (“UNCRC”) enshrines in international law the principle that young people must be able to express their views on all matters affecting them, and that these views are owed weight in accordance with their age and maturity. As social science has evolved to confirm the cognitive capacities of young people, an ever-expanding list of jurisdictions are extending democratic and voting rights to people under 18 – after all, voting is the ultimate mechanism of expressing one’s views on matters by which one is affected.
46. Jurisdictions where the minimum voting age is 16 include Argentina, Austria, Brazil, Bosnia and Herzegovina (if employed), Cuba, Ecuador, Guernsey, Isle of Man, Jersey, Malta, Nicaragua, Scotland, and Wales. Other jurisdictions, such as Greece and Indonesia, have set their minimum voting age at 17. Additional jurisdictions have set the minimum voting age at 16 in local elections including, Belgium (European elections), Estonia, Germany, Israel and a number of US municipalities.
47. The Supreme Court of Canada has made it clear that any restriction on the right of citizens to vote must be grounded in evidence. As the list of jurisdictions lowering their minimum

voting ages grows, we are provided with a wealth of international precedents that generate the evidence required to disprove assumptions made about youth voter behaviours and political competency.

48. These international examples where the voting age is below 18 confirm that assumptions and stereotypes about youth voter behaviour are unfounded. Democracy has not been impeded or harmed in these jurisdictions. To the contrary, lowering the voting age has created more politically engaged citizenries, demonstrably advancing the democratic ideals that s. 3 of the *Charter* is intended to protect.


49. The prohibition on voting for those under 18 denies capable and informed citizens meaningful participation in a fundamental democratic activity, and thus a say in the laws that shape their day-to-day lives as well as their futures. It inhibits their ability to participate equally in democratic government to which they are subject as Canadian citizens. This limitation is not demonstrably justified in a free and democratic society and must be declared of no force and effect.

50. The Applicants rely on relief under section 52 of the *Constitution Act, 1982*.

STATUTORY INSTRUMENTS RELIED UPON

1. *Canada Elections Act*, S.C. 2000, c. 9.
2. Such further and other grounds as counsel may advise and this Honourable Court may deem just.

Dated December 8, 2021



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